

PROCUREMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill recodifies and amends the Utah Procurement Code.

Highlighted Provisions:

This bill:

- defines terms;
- describes requirements and procedures relating to procurements and procurement processes by public entities;
- describes the applicability of the Utah Procurement Code;
- grants rulemaking authority;
- describes the duties and powers of the Division of Purchasing and General Services;
- provides for exemptions from certain provisions of the Utah Procurement Code;
- describes the duties and powers of the Utah State Procurement Policy Board and the procurement advisory councils;
- describes the duties and powers of the chief procurement officer;
- provides for exceptions to procurement process requirements;
- addresses cancellations, rejections, and debarment;
- addresses reciprocal preferences and purchases from community rehabilitation programs;
- describes the duties and powers of the Purchasing from Persons with Disabilities Advisory Board;
- describes bid security and bond requirements;
- describes requirements relating to contracts and change orders;

- 30 ▶ describes requirements relating to construction procurement and contracts;
- 31 ▶ describes requirements relating to architect-engineer services;
- 32 ▶ describes procedures, requirements, and limitations relating to controversies,
- 33 protests, appeals, and judicial action;
- 34 ▶ addresses the retention of records;
- 35 ▶ addresses interaction between public procurement units;
- 36 ▶ establishes ethical practice provisions relating to procurements;
- 37 ▶ amends existing, and enacts new, criminal provisions and penalties relating to
- 38 procurements; and
- 39 ▶ makes technical changes.

40 Money Appropriated in this Bill:

41 None

42 Other Special Clauses:

43 This bill takes effect on May 1, 2013.

44 This bill coordinates with S.B. 114, Contesting Public Procurements, by providing
45 substantive and technical amendments.

46 This bill coordinates with S.B. 165, Redevelopment Agency Amendments, by
47 providing substantive and technical amendments.

48 Utah Code Sections Affected:**49 AMENDS:**

50 **7-1-323**, as last amended by Laws of Utah 2008, Chapter 382

51 **7-2-21**, as last amended by Laws of Utah 2008, Chapter 382

52 **9-4-704**, as last amended by Laws of Utah 2011, Chapter 342

53 **9-4-906**, as last amended by Laws of Utah 2008, Chapter 382

54 **9-4-1602**, as enacted by Laws of Utah 2011, Chapter 217

55 **10-3-1304**, as last amended by Laws of Utah 2008, Chapter 382

56 **10-3-1305**, as last amended by Laws of Utah 2008, Chapter 382

57 **10-7-86**, as last amended by Laws of Utah 2008, Chapter 382

58 **11-17-20**, as last amended by Laws of Utah 2008, Chapter 382
59 **11-39-101**, as last amended by Laws of Utah 2008, Chapters 360 and 382
60 **11-39-107**, as last amended by Laws of Utah 2011, Chapter 387
61 **11-44-202**, as enacted by Laws of Utah 2010, Chapter 244
62 **11-44-301**, as enacted by Laws of Utah 2010, Chapter 244
63 **13-2-9**, as last amended by Laws of Utah 2008, Chapter 382
64 **14-1-18**, as last amended by Laws of Utah 2008, Chapter 382
65 **17-16a-4**, as last amended by Laws of Utah 2008, Chapter 382
66 **17-43-202**, as last amended by Laws of Utah 2008, Chapter 382
67 **17-43-302**, as last amended by Laws of Utah 2008, Chapter 382
68 **17-53-225**, as last amended by Laws of Utah 2008, Chapter 382
69 **17-53-313**, as last amended by Laws of Utah 2008, Chapter 382
70 **17B-1-108**, as last amended by Laws of Utah 2008, Chapter 382
71 **17B-2a-818**, as last amended by Laws of Utah 2010, Chapter 281
72 **17B-2a-818.5**, as last amended by Laws of Utah 2011, Chapters 297 and 400
73 **17D-1-106**, as last amended by Laws of Utah 2011, Chapters 40, 106, 205, and 209
74 **17D-2-108**, as enacted by Laws of Utah 2008, Chapter 360
75 **19-1-206**, as last amended by Laws of Utah 2011, Chapters 297 and 400
76 **20A-11-701**, as last amended by Laws of Utah 2011, Chapter 396
77 **26-8a-405.3**, as last amended by Laws of Utah 2011, Chapter 297
78 **26-8a-405.5**, as last amended by Laws of Utah 2011, Chapter 297
79 **26-10-8**, as enacted by Laws of Utah 2010, Chapter 413
80 **26-10b-102**, as last amended by Laws of Utah 2011, Chapter 297
81 **26-18-2.6**, as enacted by Laws of Utah 2011, Chapter 344
82 **26-40-110**, as last amended by Laws of Utah 2011, Chapter 297
83 **30-3-11.3**, as last amended by Laws of Utah 2011, Chapter 51
84 **30-3-11.4**, as last amended by Laws of Utah 2011, Chapter 51
85 **30-3-38**, as last amended by Laws of Utah 2008, Chapters 44 and 382

86 **31A-29-110**, as last amended by Laws of Utah 2008, Chapter 382
87 **31A-29-111**, as last amended by Laws of Utah 2008, Chapters 382 and 385
88 **31A-33-104**, as last amended by Laws of Utah 2008, Chapter 382
89 **31A-33-107**, as last amended by Laws of Utah 2008, Chapter 382
90 **34A-2-203**, as last amended by Laws of Utah 2008, Chapter 382
91 **35A-5-202**, as last amended by Laws of Utah 2008, Chapter 382
92 **38-1-30**, as last amended by Laws of Utah 2011, Chapter 299
93 **38-1-39**, as last amended by Laws of Utah 2008, Chapter 382
94 **41-12a-803**, as last amended by Laws of Utah 2011, Chapter 342
95 **53-2-404**, as last amended by Laws of Utah 2011, Chapter 342
96 **53A-1-706**, as last amended by Laws of Utah 2008, Chapter 382
97 **53A-1a-511**, as last amended by Laws of Utah 2008, Chapter 382
98 **53A-20-101**, as last amended by Laws of Utah 2008, Chapter 382
99 **53A-25b-105**, as enacted by Laws of Utah 2009, Chapter 294
100 **53C-1-201 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 247
101 and 353
102 **54-3-29**, as last amended by Laws of Utah 2011, Chapter 340
103 **54-8b-10**, as last amended by Laws of Utah 2011, Chapters 329 and 342
104 **62A-1-108.5**, as last amended by Laws of Utah 2011, Chapter 366
105 **62A-3-104**, as last amended by Laws of Utah 2008, Chapter 382
106 **62A-3-104.1**, as last amended by Laws of Utah 2008, Chapter 382
107 **62A-14-109**, as last amended by Laws of Utah 2008, Chapter 382
108 **63A-5-205**, as last amended by Laws of Utah 2011, Chapter 400
109 **63A-5-208**, as last amended by Laws of Utah 2008, Chapter 382
110 **63A-5-302**, as last amended by Laws of Utah 2010, Chapter 324
111 **63B-2-102**, as last amended by Laws of Utah 2008, Chapter 382
112 **63B-3-102**, as last amended by Laws of Utah 2008, Chapter 382
113 **63B-4-102**, as last amended by Laws of Utah 2008, Chapter 382

114 **63B-5-102**, as last amended by Laws of Utah 2008, Chapter 382
115 **63B-6-102**, as last amended by Laws of Utah 2008, Chapter 382
116 **63B-6-402**, as last amended by Laws of Utah 2008, Chapter 382
117 **63B-7-102**, as last amended by Laws of Utah 2008, Chapter 382
118 **63B-7-402**, as last amended by Laws of Utah 2008, Chapter 382
119 **63B-8-102**, as last amended by Laws of Utah 2008, Chapter 382
120 **63B-8-402**, as last amended by Laws of Utah 2008, Chapter 382
121 **63B-9-103**, as last amended by Laws of Utah 2008, Chapter 382
122 **63B-11-202**, as last amended by Laws of Utah 2008, Chapter 382
123 **63C-7-210**, as last amended by Laws of Utah 2008, Chapter 382
124 **63C-9-301**, as last amended by Laws of Utah 2008, Chapters 10 and 382
125 **63C-9-403**, as last amended by Laws of Utah 2011, Chapter 400
126 **63E-2-109**, as last amended by Laws of Utah 2008, Chapter 382
127 **63F-1-205**, as last amended by Laws of Utah 2011, Chapter 376
128 **63G-7-804**, as renumbered and amended by Laws of Utah 2008, Chapter 382
129 **63G-10-403**, as enacted by Laws of Utah 2011, Chapter 361
130 **63H-2-504**, as enacted by Laws of Utah 2009, Chapter 378
131 **63H-3-109**, as renumbered and amended by Laws of Utah 2011, Chapter 370
132 **63H-4-108**, as renumbered and amended by Laws of Utah 2011, Chapter 370
133 **63H-5-108**, as renumbered and amended by Laws of Utah 2011, Chapter 370
134 **63H-6-103**, as renumbered and amended by Laws of Utah 2011, Chapter 370
135 **63I-1-263**, as last amended by Laws of Utah 2011, Chapters 199, 370, 408, and 411
136 **63M-1-2602**, as enacted by Laws of Utah 2008, Chapter 352
137 **63M-1-2603**, as enacted by Laws of Utah 2008, Chapter 352
138 **63M-1-2605**, as enacted by Laws of Utah 2008, Chapter 352
139 **63M-1-2606**, as enacted by Laws of Utah 2008, Chapter 352
140 **63M-1-2607**, as enacted by Laws of Utah 2008, Chapter 352
141 **63M-1-2608**, as enacted by Laws of Utah 2008, Chapter 352

142 **63M-1-2610**, as enacted by Laws of Utah 2008, Chapter 352
143 **64-13a-13**, as last amended by Laws of Utah 2008, Chapter 382
144 **67-16-4**, as last amended by Laws of Utah 2008, Chapter 382
145 **67-16-5**, as last amended by Laws of Utah 2008, Chapter 382
146 **67-16-5.3**, as last amended by Laws of Utah 2008, Chapter 382
147 **67-16-6**, as last amended by Laws of Utah 2008, Chapter 382
148 **72-6-107**, as last amended by Laws of Utah 2010, Chapter 90
149 **72-6-107.5**, as last amended by Laws of Utah 2011, Chapter 400
150 **72-6-108**, as last amended by Laws of Utah 2009, Chapter 388
151 **72-6-205**, as last amended by Laws of Utah 2009, Chapter 183
152 **72-7-504**, as last amended by Laws of Utah 2008, Chapter 382
153 **73-10-27**, as last amended by Laws of Utah 2008, Chapters 267 and 382
154 **73-23-3**, as last amended by Laws of Utah 2008, Chapter 382
155 **76-10-1602**, as last amended by Laws of Utah 2011, Chapter 320
156 **78A-2-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
157 **79-2-404**, as last amended by Laws of Utah 2011, Chapter 400
158 **79-4-203**, as renumbered and amended by Laws of Utah 2009, Chapter 344

159 ENACTS:

160 **63G-6a-104**, Utah Code Annotated 1953
161 **63G-6a-110**, Utah Code Annotated 1953
162 **63G-6a-201**, Utah Code Annotated 1953
163 **63G-6a-301**, Utah Code Annotated 1953
164 **63G-6a-401**, Utah Code Annotated 1953
165 **63G-6a-402**, Utah Code Annotated 1953
166 **63G-6a-403**, Utah Code Annotated 1953
167 **63G-6a-404**, Utah Code Annotated 1953
168 **63G-6a-405**, Utah Code Annotated 1953
169 **63G-6a-406**, Utah Code Annotated 1953

170 **63G-6a-408**, Utah Code Annotated 1953
171 **63G-6a-501**, Utah Code Annotated 1953
172 **63G-6a-502**, Utah Code Annotated 1953
173 **63G-6a-503**, Utah Code Annotated 1953
174 **63G-6a-504**, Utah Code Annotated 1953
175 **63G-6a-601**, Utah Code Annotated 1953
176 **63G-6a-602**, Utah Code Annotated 1953
177 **63G-6a-603**, Utah Code Annotated 1953
178 **63G-6a-604**, Utah Code Annotated 1953
179 **63G-6a-605**, Utah Code Annotated 1953
180 **63G-6a-606**, Utah Code Annotated 1953
181 **63G-6a-607**, Utah Code Annotated 1953
182 **63G-6a-608**, Utah Code Annotated 1953
183 **63G-6a-609**, Utah Code Annotated 1953
184 **63G-6a-610**, Utah Code Annotated 1953
185 **63G-6a-611**, Utah Code Annotated 1953
186 **63G-6a-612**, Utah Code Annotated 1953
187 **63G-6a-701**, Utah Code Annotated 1953
188 **63G-6a-702**, Utah Code Annotated 1953
189 **63G-6a-703**, Utah Code Annotated 1953
190 **63G-6a-704**, Utah Code Annotated 1953
191 **63G-6a-705**, Utah Code Annotated 1953
192 **63G-6a-706**, Utah Code Annotated 1953
193 **63G-6a-707**, Utah Code Annotated 1953
194 **63G-6a-708**, Utah Code Annotated 1953
195 **63G-6a-709**, Utah Code Annotated 1953
196 **63G-6a-710**, Utah Code Annotated 1953
197 **63G-6a-801**, Utah Code Annotated 1953

198 **63G-6a-803**, Utah Code Annotated 1953
199 **63G-6a-901**, Utah Code Annotated 1953
200 **63G-6a-1001**, Utah Code Annotated 1953
201 **63G-6a-1004**, Utah Code Annotated 1953
202 **63G-6a-1101**, Utah Code Annotated 1953
203 **63G-6a-1201**, Utah Code Annotated 1953
204 **63G-6a-1204**, Utah Code Annotated 1953
205 **63G-6a-1301**, Utah Code Annotated 1953
206 **63G-6a-1401**, Utah Code Annotated 1953
207 **63G-6a-1501**, Utah Code Annotated 1953
208 **63G-6a-1601**, Utah Code Annotated 1953
209 **63G-6a-1701**, Utah Code Annotated 1953
210 **63G-6a-1801**, Utah Code Annotated 1953
211 **63G-6a-1901**, Utah Code Annotated 1953
212 **63G-6a-2001**, Utah Code Annotated 1953
213 **63G-6a-2101**, Utah Code Annotated 1953
214 **63G-6a-2201**, Utah Code Annotated 1953
215 **63G-6a-2202**, Utah Code Annotated 1953
216 **63G-6a-2301**, Utah Code Annotated 1953
217 **63G-6a-2303**, Utah Code Annotated 1953
218 **63G-6a-2304**, Utah Code Annotated 1953
219 **63G-6a-2305**, Utah Code Annotated 1953
220 **63G-6a-2306**, Utah Code Annotated 1953
221 **63G-6a-2307**, Utah Code Annotated 1953

222 RENUMBERS AND AMENDS:

223 **63G-6a-101**, (Renumbered from 63G-6-101, as enacted by Laws of Utah 2008, Chapter
224 382)
225 **63G-6a-102**, (Renumbered from 63G-6-102, as renumbered and amended by Laws of

226 Utah 2008, Chapter 382)
227 **63G-6a-103**, (Renumbered from 63G-6-103, as last amended by Laws of Utah 2011,
228 Chapter 376)
229 **63G-6a-105**, (Renumbered from 63G-6-104, as renumbered and amended by Laws of
230 Utah 2008, Chapter 382)
231 **63G-6a-106**, (Renumbered from 63G-6-207, as last amended by Laws of Utah 2008,
232 Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382)
233 **63G-6a-109**, (Renumbered from 63G-6-105, as renumbered and amended by Laws of
234 Utah 2008, Chapter 382)
235 **63G-6a-202**, (Renumbered from 63G-6-201, as last amended by Laws of Utah 2011,
236 Chapter 376)
237 **63G-6a-203**, (Renumbered from 63G-6-202, as last amended by Laws of Utah 2011,
238 Chapter 376)
239 **63G-6a-204**, (Renumbered from 63G-6-208, as last amended by Laws of Utah 2009,
240 Chapter 132)
241 **63G-6a-205**, (Renumbered from 63G-6-209, as renumbered and amended by Laws of
242 Utah 2008, Chapter 382)
243 **63G-6a-302**, (Renumbered from 63G-6-203, as renumbered and amended by Laws of
244 Utah 2008, Chapter 382)
245 **63G-6a-303**, (Renumbered from 63G-6-204, as last amended by Laws of Utah 2008,
246 Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)
247 **63G-6a-304**, (Renumbered from 63G-6-205, as last amended by Laws of Utah 2008,
248 Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)
249 **63G-6a-305**, (Renumbered from 63G-6-302, as last amended by Laws of Utah 2011,
250 Chapter 376)
251 **63G-6a-407**, (Renumbered from 63G-6-303, as renumbered and amended by Laws of
252 Utah 2008, Chapter 382)
253 **63G-6a-711**, (Renumbered from 63G-6-408.5, as enacted by Laws of Utah 2008,

254 Chapter 352)

255 **63G-6a-802**, (Renumbered from 63G-6-410, as renumbered and amended by Laws of
256 Utah 2008, Chapter 382)

257 **63G-6a-804**, (Renumbered from 63G-6-423, as renumbered and amended by Laws of
258 Utah 2008, Chapter 382)

259 **63G-6a-805**, (Renumbered from 63G-6-425, as renumbered and amended by Laws of
260 Utah 2008, Chapter 382)

261 **63G-6a-902**, (Renumbered from 63G-6-412, as renumbered and amended by Laws of
262 Utah 2008, Chapter 382)

263 **63G-6a-903**, (Renumbered from 63G-6-413, as renumbered and amended by Laws of
264 Utah 2008, Chapter 382)

265 **63G-6a-904**, (Renumbered from 63G-6-804, as renumbered and amended by Laws of
266 Utah 2008, Chapter 382)

267 **63G-6a-1002**, (Renumbered from 63G-6-404, as renumbered and amended by Laws of
268 Utah 2008, Chapter 382)

269 **63G-6a-1003**, (Renumbered from 63G-6-405, as renumbered and amended by Laws of
270 Utah 2008, Chapter 382)

271 **63G-6a-1102**, (Renumbered from 63G-6-504, as renumbered and amended by Laws of
272 Utah 2008, Chapter 382)

273 **63G-6a-1103**, (Renumbered from 63G-6-505, as renumbered and amended by Laws of
274 Utah 2008, Chapter 382)

275 **63G-6a-1104**, (Renumbered from 63G-6-506, as last amended by Laws of Utah 2011,
276 Chapter 299)

277 **63G-6a-1105**, (Renumbered from 63G-6-507, as renumbered and amended by Laws of
278 Utah 2008, Chapter 382)

279 **63G-6a-1202**, (Renumbered from 63G-6-601, as renumbered and amended by Laws of
280 Utah 2008, Chapter 382)

281 **63G-6a-1203**, (Renumbered from 63G-6-603, as enacted by Laws of Utah 2009,

282 Chapter 217)

283 **63G-6a-1205**, (Renumbered from 63G-6-416, as renumbered and amended by Laws of

284 Utah 2008, Chapter 382)

285 **63G-6a-1206**, (Renumbered from 63G-6-415, as renumbered and amended by Laws of

286 Utah 2008, Chapter 382)

287 **63G-6a-1207**, (Renumbered from 63G-6-602, as renumbered and amended by Laws of

288 Utah 2008, Chapter 382)

289 **63G-6a-1302**, (Renumbered from 63G-6-501, as renumbered and amended by Laws of

290 Utah 2008, Chapter 382)

291 **63G-6a-1303**, (Renumbered from 63G-6-604, as enacted by Laws of Utah 2010,

292 Chapter 18)

293 **63G-6a-1402**, (Renumbered from 63G-6-502, as last amended by Laws of Utah 2010,

294 Chapter 358)

295 **63G-6a-1403**, (Renumbered from 63G-6-503, as renumbered and amended by Laws of

296 Utah 2008, Chapter 382)

297 **63G-6a-1502**, (Renumbered from 63G-6-701, as renumbered and amended by Laws of

298 Utah 2008, Chapter 382)

299 **63G-6a-1503**, (Renumbered from 63G-6-702, as renumbered and amended by Laws of

300 Utah 2008, Chapter 382)

301 **63G-6a-1504**, (Renumbered from 63G-6-703, as renumbered and amended by Laws of

302 Utah 2008, Chapter 382)

303 **63G-6a-1505**, (Renumbered from 63G-6-704, as renumbered and amended by Laws of

304 Utah 2008, Chapter 382)

305 **63G-6a-1506**, (Renumbered from 63G-6-705, as renumbered and amended by Laws of

306 Utah 2008, Chapter 382)

307 **63G-6a-1602**, (Renumbered from 63G-6-805, as renumbered and amended by Laws of

308 Utah 2008, Chapter 382)

309 **63G-6a-1603**, (Renumbered from 63G-6-801, as last amended by Laws of Utah 2011,

310 Chapter 361)

311 **63G-6a-1604**, (Renumbered from 63G-6-806, as renumbered and amended by Laws of

312 Utah 2008, Chapter 382)

313 **63G-6a-1605**, (Renumbered from 63G-6-907, as renumbered and amended by Laws of

314 Utah 2008, Chapter 382)

315 **63G-6a-1606**, (Renumbered from 63G-6-802, as renumbered and amended by Laws of

316 Utah 2008, Chapter 382)

317 **63G-6a-1607**, (Renumbered from 63G-6-803, as renumbered and amended by Laws of

318 Utah 2008, Chapter 382)

319 **63G-6a-1702**, (Renumbered from 63G-6-807, as last amended by Laws of Utah 2010,

320 Chapter 286)

321 **63G-6a-1703**, (Renumbered from 63G-6-810, as renumbered and amended by Laws of

322 Utah 2008, Chapter 382)

323 **63G-6a-1704**, (Renumbered from 63G-6-808, as renumbered and amended by Laws of

324 Utah 2008, Chapter 382)

325 **63G-6a-1705**, (Renumbered from 63G-6-809, as renumbered and amended by Laws of

326 Utah 2008, Chapter 382)

327 **63G-6a-1706**, (Renumbered from 63G-6-811, as renumbered and amended by Laws of

328 Utah 2008, Chapter 382)

329 **63G-6a-1707**, (Renumbered from 63G-6-812, as renumbered and amended by Laws of

330 Utah 2008, Chapter 382)

331 **63G-6a-1708**, (Renumbered from 63G-6-813, as renumbered and amended by Laws of

332 Utah 2008, Chapter 382)

333 **63G-6a-1802**, (Renumbered from 63G-6-814, as renumbered and amended by Laws of

334 Utah 2008, Chapter 382)

335 **63G-6a-1803**, (Renumbered from 63G-6-815, as renumbered and amended by Laws of

336 Utah 2008, Chapter 382)

337 **63G-6a-1804**, (Renumbered from 63G-6-817, as renumbered and amended by Laws of

338 Utah 2008, Chapter 382)
339 **63G-6a-1805**, (Renumbered from 63G-6-816, as renumbered and amended by Laws of
340 Utah 2008, Chapter 382)
341 **63G-6a-1902**, (Renumbered from 63G-6-419, as renumbered and amended by Laws of
342 Utah 2008, Chapter 382)
343 **63G-6a-1903**, (Renumbered from 63G-6-818, as renumbered and amended by Laws of
344 Utah 2008, Chapter 382)
345 **63G-6a-1904**, (Renumbered from 63G-6-819, as renumbered and amended by Laws of
346 Utah 2008, Chapter 382)
347 **63G-6a-1905**, (Renumbered from 63G-6-820, as renumbered and amended by Laws of
348 Utah 2008, Chapter 382)
349 **63G-6a-2002**, (Renumbered from 63G-6-106, as renumbered and amended by Laws of
350 Utah 2008, Chapter 382)
351 **63G-6a-2003**, (Renumbered from 63G-6-421, as renumbered and amended by Laws of
352 Utah 2008, Chapter 382)
353 **63G-6a-2004**, (Renumbered from 63G-6-905, as renumbered and amended by Laws of
354 Utah 2008, Chapter 382)
355 **63G-6a-2102**, (Renumbered from 63G-6-901, as renumbered and amended by Laws of
356 Utah 2008, Chapter 382)
357 **63G-6a-2103**, (Renumbered from 63G-6-902, as renumbered and amended by Laws of
358 Utah 2008, Chapter 382)
359 **63G-6a-2104**, (Renumbered from 63G-6-904, as renumbered and amended by Laws of
360 Utah 2008, Chapter 382)
361 **63G-6a-2105**, (Renumbered from 63G-6-424, as renumbered and amended by Laws of
362 Utah 2008, Chapter 382)
363 **63G-6a-2302**, (Renumbered from 63G-6-420, as renumbered and amended by Laws of
364 Utah 2008, Chapter 382)
365 REPEALS:

366 **10-7-87**, as last amended by Laws of Utah 2008, Chapter 382
367 **11-37-101**, as last amended by Laws of Utah 2008, Chapter 382
368 **17-15-24**, as last amended by Laws of Utah 2008, Chapter 382
369 **17B-1-109**, as renumbered and amended by Laws of Utah 2007, Chapter 329
370 **26A-1-108.7**, as last amended by Laws of Utah 2008, Chapter 382
371 **63G-6-206**, as renumbered and amended by Laws of Utah 2008, Chapter 382
372 **63G-6-301**, as last amended by Laws of Utah 2011, Chapter 376
373 **63G-6-401**, as last amended by Laws of Utah 2009, Chapter 388
374 **63G-6-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382
375 **63G-6-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382
376 **63G-6-406**, as renumbered and amended by Laws of Utah 2008, Chapter 382
377 **63G-6-407**, as renumbered and amended by Laws of Utah 2008, Chapter 382
378 **63G-6-408**, as renumbered and amended by Laws of Utah 2008, Chapter 382
379 **63G-6-409**, as renumbered and amended by Laws of Utah 2008, Chapter 382
380 **63G-6-411**, as renumbered and amended by Laws of Utah 2008, Chapter 382
381 **63G-6-414**, as renumbered and amended by Laws of Utah 2008, Chapter 382
382 **63G-6-417**, as renumbered and amended by Laws of Utah 2008, Chapter 382
383 **63G-6-418**, as renumbered and amended by Laws of Utah 2008, Chapter 382
384 **63G-6-422**, as renumbered and amended by Laws of Utah 2008, Chapter 382
385 **63G-6-426**, as renumbered and amended by Laws of Utah 2008, Chapter 382
386 **63G-6-903**, as renumbered and amended by Laws of Utah 2008, Chapter 382
387 **63G-6-906**, as renumbered and amended by Laws of Utah 2008, Chapter 382
388 **63G-6-1001**, as renumbered and amended by Laws of Utah 2008, Chapter 382
389 **63G-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 382

390 **Utah Code Sections Affected by Coordination Clause:**

391 **26-8a-405.3**, as last amended by Laws of Utah 2011, Chapter 297
392 **63A-5-208**, as last amended by Laws of Utah 2008, Chapter 382
393 **63G-6-104**, as renumbered and amended by Laws of Utah 2008, Chapter 382

394 **63G-6-201**, as last amended by Laws of Utah 2011, Chapter 376
395 **63G-6-202**, as last amended by Laws of Utah 2011, Chapter 376
396 **63G-6-801**, as last amended by Laws of Utah 2011, Chapter 361
397 **63G-6-801.5**, Utah Code Annotated 1953
398 **63G-6-802**, as renumbered and amended by Laws of Utah 2008, Chapter 382
399 **63G-6-803**, as renumbered and amended by Laws of Utah 2008, Chapter 382
400 **63G-6-805**, as renumbered and amended by Laws of Utah 2008, Chapter 382
401 **63G-6-806**, as renumbered and amended by Laws of Utah 2008, Chapter 382
402 **63G-6-807**, as last amended by Laws of Utah 2010, Chapter 286
403 **63G-6-807.5**, Utah Code Annotated 1953
404 **63G-6-808**, as renumbered and amended by Laws of Utah 2008, Chapter 382
405 **63G-6-809**, as renumbered and amended by Laws of Utah 2008, Chapter 382
406 **63G-6-810**, as renumbered and amended by Laws of Utah 2008, Chapter 382
407 **63G-6-811**, as renumbered and amended by Laws of Utah 2008, Chapter 382
408 **63G-6-812**, as renumbered and amended by Laws of Utah 2008, Chapter 382
409 **63G-6-813**, as renumbered and amended by Laws of Utah 2008, Chapter 382
410 **63G-6-814**, as renumbered and amended by Laws of Utah 2008, Chapter 382
411 **63G-6-814.5**, Utah Code Annotated 1953
412 **63G-6-815**, as renumbered and amended by Laws of Utah 2008, Chapter 382
413 **63G-6-816**, as renumbered and amended by Laws of Utah 2008, Chapter 382
414 **63G-6-817**, as renumbered and amended by Laws of Utah 2008, Chapter 382
415 **63G-6-818**, as renumbered and amended by Laws of Utah 2008, Chapter 382
416 **63G-6-819**, as renumbered and amended by Laws of Utah 2008, Chapter 382
417 **63G-6-820**, as renumbered and amended by Laws of Utah 2008, Chapter 382
418 **63G-6-907**, as renumbered and amended by Laws of Utah 2008, Chapter 382
419 **63G-6a-103**, Utah Code Annotated 1953
420 **63G-6a-104**, Utah Code Annotated 1953
421 **63G-6a-105**, Utah Code Annotated 1953

422 **63G-6a-202**, Utah Code Annotated 1953
423 **63G-6a-203**, Utah Code Annotated 1953
424 **63G-6a-1602**, Utah Code Annotated 1953
425 **63G-6a-1603**, Utah Code Annotated 1953
426 **63G-6a-1604**, Utah Code Annotated 1953
427 **63G-6a-1605**, Utah Code Annotated 1953
428 **63G-6a-1606**, Utah Code Annotated 1953
429 **63G-6a-1702**, Utah Code Annotated 1953
430 **63G-6a-1703**, Utah Code Annotated 1953
431 **63G-6a-1704**, Utah Code Annotated 1953
432 **63G-6a-1705**, Utah Code Annotated 1953
433 **63G-6a-1706**, Utah Code Annotated 1953
434 **63G-6a-1707**, Utah Code Annotated 1953
435 **63G-6a-1708**, Utah Code Annotated 1953
436 **63G-6a-1802**, Utah Code Annotated 1953
437 **63G-6a-1803**, Utah Code Annotated 1953
438 **63G-6a-1804**, Utah Code Annotated 1953
439 **63G-6a-1805**, Utah Code Annotated 1953
440 **63G-6a-1902**, Utah Code Annotated 1953
441 **63G-6a-1903**, Utah Code Annotated 1953
442 **63G-6a-1904**, Utah Code Annotated 1953
443 **63G-6a-1905**, Utah Code Annotated 1953
444 **63G-6a-1906**, Utah Code Annotated 1953
445 **63G-6a-1907**, Utah Code Annotated 1953
446 **63G-6a-1908**, Utah Code Annotated 1953
447 **63G-6a-1909**, Utah Code Annotated 1953
448 **63G-6a-1910**, Utah Code Annotated 1953
449 **63G-6a-1911**, Utah Code Annotated 1953

450 **63G-10-403**, as enacted by Laws of Utah 2011, Chapter 361

451

452 *Be it enacted by the Legislature of the state of Utah:*

453 Section 1. Section **7-1-323** is amended to read:

454 **7-1-323. Regulation of interstate operations -- Coordination of efforts.**

455 (1) The commissioner may:

456 (a) examine, supervise, and regulate a branch operated in this state by a depository
457 institution chartered by another state and take any action or issue any order with regard to that
458 branch;

459 (b) examine, supervise, and regulate a branch operated in another state by a depository
460 institution chartered by this state and take any action or issue any order with regard to that
461 branch; and

462 (c) coordinate these activities with any other state or federal agency that shares
463 jurisdiction over the institution.

464 (2) The commissioner may coordinate the examination, supervision, and regulation of
465 any depository institution chartered by this state with the examination, supervision, and
466 regulation of an affiliated depository institution operating in another state.

467 (3) The commissioner may take any reasonable and lawful action in furtherance of
468 coordinating the regulation of interstate operations, including:

469 (a) negotiating and entering into cooperative agreements with an agency of another
470 state or of the federal government;

471 (b) sharing information and reports in accordance with Section 7-1-802 with an agency
472 that shares jurisdiction over the institution;

473 (c) accepting as sufficient, if appropriate, examination reports and other information
474 compiled or generated by or for an agency that shares jurisdiction over the institution;

475 (d) contracting with an agency that shares jurisdiction over the institution to engage the
476 services of its examiners at a reasonable rate of compensation;

477 (e) offering the services of the department's examiners at a reasonable rate of

478 compensation to an agency that shares jurisdiction over the institution;

479 (f) collecting fees on behalf of, or receiving payment of fees through, an agency that
480 shares jurisdiction over the institution; and

481 (g) cooperating in any other way with other supervisory agencies and professional
482 associations to promote the efficient, safe, and sound operation and regulation of interstate
483 depository institution activities, including the formulation of interstate examination policies
484 and procedures and the drafting of model laws, rules, and agreements.

485 (4) A contract between the department and an agency that shares jurisdiction over a
486 depository institution to provide examiners to aid in interstate examination and regulation is
487 considered a sole source contract under Section [~~63G-6-410~~] 63G-6a-802.

488 Section 2. Section **7-2-21** is amended to read:

489 **7-2-21. Applicability of Utah Procurement Code.**

490 No action of the commissioner taken under this chapter or Chapter 19, Acquisition of
491 Failing Depository Institutions or Holding Companies, is subject to the provisions of Title 63G,
492 Chapter [~~6~~] 6a, Utah Procurement Code.

493 Section 3. Section **9-4-704** is amended to read:

494 **9-4-704. Distribution of fund money.**

495 (1) The executive director shall:

496 (a) make grants and loans from the fund for any of the activities authorized by Section
497 9-4-705, as directed by the board;

498 (b) establish the criteria with the approval of the board by which loans and grants will
499 be made; and

500 (c) determine with the approval of the board the order in which projects will be funded.

501 (2) The executive director shall distribute, as directed by the board, any federal money
502 contained in the fund according to the procedures, conditions, and restrictions placed upon the
503 use of the money by the federal government.

504 (3) (a) The executive director shall distribute, as directed by the board, any funds
505 received pursuant to Section 17C-1-412 to pay the costs of providing income targeted housing

within the community that created the community development and renewal agency under Title 17C, Limited Purpose Local Government Entities - Community Development and Renewal Agencies Act.

(b) As used in Subsection (3)(a):

(i) "Community" has the meaning as defined in Section 17C-1-102.

(ii) "Income targeted housing" has the meaning as defined in Section 17C-1-102.

(4) Except federal money and money received under Section 17C-1-412, the executive director shall distribute, as directed by the board, all other money from the fund according to the following requirements:

(a) Not less than 30% of all fund money shall be distributed to rural areas of the state.

(b) At least 50% of the money in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund money distributed as loans, at least 50% shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan money shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(ii) The executive director or the executive director's designee shall lend money in accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

(c) Any fund money not distributed as loans shall be distributed as grants.

(i) At least 90% of the fund money distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining fund money distributed as grants may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this part, including the payment of reasonable loan servicing costs, but no more than 3% of the revenues of the fund may be used to offset other department or board administrative expenses.

(5) The executive director may with the approval of the board:

(a) enact rules to establish procedures for the grant and loan process by following the

procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
and

(b) service or contract, pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code,
for the servicing of loans made by the fund.

Section 4. Section **9-4-906** is amended to read:

9-4-906. Relation to certain acts.

(1) The corporation is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) Title 63A, Utah Administrative Services Code; [~~and~~]

(d) Title 63G, Chapter [6] 6a, Utah Procurement Code;

(e) Title 63J, Chapter 1, Budgetary Procedures Act;

(f) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

(g) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The corporation shall comply with:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

Section 5. Section **9-4-1602** is amended to read:

9-4-1602. Distribution of fund money.

(1) (a) The director shall make loans and loan guarantees from the fund for the Small
Business Credit Initiative created under the federal government's Small Business Jobs Act of
2010, to use federal money for programs that leverage private lending to help finance small
businesses and manufacturers that are creditworthy but not receiving the loans needed to
expand and create jobs.

(b) In making loans and loan guarantees under this part, the director shall give due
consideration to small businesses in underserved communities throughout the state that have
been deeply impacted by recession and not seen a comparable resurgence in their economies.

(2) The director shall distribute any federal money in the fund according to the

procedures, conditions, and restrictions placed upon the use of the money by the federal government.

(3) The director may, with the approval of the executive director of the department:

(a) enact rules to establish procedures for the loan and loan guarantee process by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) service or contract, under Title 63G, Chapter [6] 6a, Utah Procurement Code, for the servicing of loans made by the fund.

Section 6. Section **10-3-1304** is amended to read:

10-3-1304. Use of office for personal benefit prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for an elected or appointed officer or municipal employee, under circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to:

(a) disclose or improperly use private, controlled, or protected information acquired by reason of the officer's or employee's official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for the officer or employee or for others;

(b) use or attempt to use the officer's or employee's official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges for the officer or employee or for others; or

(c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer or employee or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:

(i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(3) Subsection (2)(c) does not apply to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 7. Section **10-3-1305** is amended to read:

**10-3-1305. Compensation for assistance in transaction involving municipality --
Public disclosure and filing required.**

(1) As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.

(2) It is an offense for an elected officer, or appointed officer, who is a member of a public body, under circumstances not amounting to a violation of Section ~~[63G-6-1001]~~ 63G-6a-2304 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality in which the member is an officer unless the member:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) in an open meeting to the members of the body of which the officer is a member immediately before the discussion.

(3) It is an offense for an appointed officer who is not a member of a public body or a municipal employee to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality by which the person is employed unless the officer or employee:

(a) files with the mayor a sworn statement giving the information required by this section; and

(b) discloses the information required by Subsection (5) to:

(i) the officer or employee's immediate supervisor; and

(ii) any other municipal officer or employee who may rely upon the employee's representations in evaluating or approving the transaction.

(4) (a) The officer or employee shall file the statement required to be filed by this section 10 days before the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or 10 days before the receipt of compensation by the officer or employee, whichever is earlier.

(b) The statement is public information and shall be available for examination by the public.

(5) The statement and disclosure shall contain:

(a) the name and address of the officer or municipal employee;

(b) the name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest; and

(c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

Section 8. Section **10-7-86** is amended to read:

10-7-86. Municipality may adopt Utah Procurement Code -- Hiring of professional architect, engineer, or surveyor.

(1) The governing body of any municipality may adopt any or all of the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that code.

(2) Notwithstanding Subsection (1), the governing body of each municipality that engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement:

(a) shall consider, as a minimum, in the selection process:

(i) the qualifications, experience, and background of each firm submitting a proposal;
(ii) the specific individuals assigned to the project and the time commitments of each
to the project; and

(iii) the project schedule and the approach to the project that the firm will take; and

(b) may engage the services of a professional architect, engineer, or surveyor based on
the criteria under Subsection (2)(a) rather than solely on lowest cost.

Section 9. Section **11-17-20** is amended to read:

11-17-20. Power of the State Charter School Finance Authority.

(1) The State Charter School Finance Authority may exercise the powers granted to
municipalities and counties by this chapter, subject to the same limitations as that imposed on a
municipality or county under the chapter, except as provided by Title 53A, Chapter 20b, State
Charter School Finance Authority Act.

(2) As used in this chapter, "governing body" when applied to the State Charter School
Finance Authority means the authority's governing board as described in Section 53A-20b-103.

(3) Notwithstanding Section 11-17-15, a charter school that receives financing under
this chapter is subject to Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 10. Section **11-39-101** is amended to read:

11-39-101. Definitions.

As used in this chapter:

(1) "Bid limit" means:

(a) for a building improvement:

(i) for the year 2003, \$40,000; and

(ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
of 3% or the actual percent change in the Consumer Price Index during the previous calendar
year; and

(b) for a public works project:

(i) for the year 2003, \$125,000; and

(ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.

(2) "Building improvement":

(a) means the construction or repair of a public building or structure; and

(b) does not include construction or repair at an international airport.

(3) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) "Design-build project":

(a) means a building improvement or public works project costing over \$250,000 with respect to which both the design and construction are provided for in a single contract with a contractor or combination of contractors capable of providing design-build services; and

(b) does not include a building improvement or public works project:

(i) that is undertaken by a local entity under contract with a construction manager that guarantees the contract price and is at risk for any amount over the contract price; and

(ii) each component of which is competitively bid.

(5) "Design-build services" means the engineering, architectural, and other services necessary to formulate and implement a design-build project, including its actual construction.

(6) "Emergency repairs" means a building improvement or public works project undertaken on an expedited basis to:

(a) eliminate an imminent risk of damage to or loss of public or private property;

(b) remedy a condition that poses an immediate physical danger; or

(c) reduce a substantial, imminent risk of interruption of an essential public service.

(7) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;

(b) for a local district, the board of trustees of the local district; and

(c) for a special service district:

(i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

(ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301.

(8) "Local district" has the same meaning as defined in Section 17B-1-102.

(9) "Local entity" means a county, city, town, local district, or special service district.

(10) "Lowest responsive responsible bidder" means a prime contractor who:

(a) has submitted a bid in compliance with the invitation to bid and within the requirements of the plans and specifications for the building improvement or public works project;

(b) is the lowest bidder that satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements;

(c) has furnished a bid bond or equivalent in money as a condition to the award of a prime contract; and

(d) furnishes a payment and performance bond as required by law.

(11) "Procurement code" means the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

(12) "Public works project":

(a) means the construction of:

(i) a park or recreational facility; or

(ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control; and

(b) does not include:

(i) the replacement or repair of existing infrastructure on private property;

(ii) construction commenced before June 1, 2003; and

(iii) construction or repair at an international airport.

(13) "Special service district" has the same meaning as defined in Section 17D-1-102.

Section 11. Section **11-39-107** is amended to read:

11-39-107. Procurement code.

(1) This chapter may not be construed to:

(a) prohibit a county or municipal legislative body from adopting the procedures of the procurement code; or

(b) limit the application of the procurement code to a local district or special service district.

(2) A local entity may adopt procedures for the following construction contracting methods:

(a) construction manager/general contractor, as defined in Section [~~63G-6-103~~] 63G-6a-103; or

(b) a method that requires that the local entity draft a plan, specifications, and an estimate for the building improvement or public works project.

(3) For a public works project only and that costs \$10,000,000 or more, the following may enter into a contract for design-build, as defined in Section [~~63G-6-103~~] 63G-6a-103, and adopt the procedures and follow the provisions of the procurement code for the procurement of and as the procedures and provisions relate to a design-build:

(a) a city of the first class;

(b) a local district; or

(c) a special service district.

(4) (a) In seeking bids and awarding a contract for a building improvement or public works project, a county or a municipal legislative body may elect to follow the provisions of the procurement code, as the county or municipal legislative body considers appropriate under the circumstances, for specification preparation, source selection, or contract formation.

(b) A county or municipal legislative body's election to adopt the procedures of the procurement code may not excuse the county or municipality, respectively, from complying with the requirements to award a contract for work in excess of the bid limit and to publish

notice of the intent to award.

(c) An election under Subsection (4)(a) may be made on a case-by-case basis, unless the county or municipality has previously adopted ~~[the procurement code as permitted by Subsection 63G-6-104(3)(c)]~~ the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

(d) The county or municipal legislative body shall:

(i) make each election under Subsection (4)(a) in an open meeting; and

(ii) specify in its action the portions of the procurement code to be followed.

(5) If the estimated cost of the building improvement or public works project proposed by a local district or special service district exceeds the bid limit, the governing body of the local district or special service district may, if it determines to proceed with the building improvement or public works project, use the competitive procurement procedures of the procurement code in place of the comparable provisions of this chapter.

Section 12. Section **11-44-202** is amended to read:

11-44-202. Types of agreements.

Notwithstanding Section ~~[63G-6-416]~~ 63G-6a-1205, a political subdivision shall structure an energy service agreement as a guaranteed energy savings performance contract, which shall include:

(1) the design and installation of an energy efficiency measure, if applicable;

(2) operation and maintenance of any energy efficiency measure implemented; and

(3) guaranteed annual cost savings that meet or exceed the total annual contract payments by the political subdivision under the contract, including financing charges incurred by the political subdivision over the life of the contract.

Section 13. Section **11-44-301** is amended to read:

11-44-301. Selection.

(1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code, when selecting a qualified energy service provider.

(2) The Division of Purchasing shall maintain a list of qualified energy service providers.

(3) The qualified energy service provider selected from the bid process shall prepare an investment grade energy audit, which shall become part of the final contract between the political subdivision and the qualified energy service provider.

(4) The audit shall include:

(a) a detailed description of the energy efficiency measure;

(b) an estimated cost; and

(c) a projected cost savings.

Section 14. Section **13-2-9** is amended to read:

13-2-9. Internet -- Consumer education.

(1) The Division of Consumer Protection shall, subject to appropriation, contract with a person to make public service announcements advising consumers about the dangers of using the Internet, especially:

(a) material harmful to minors;

(b) steps a consumer may take to learn more about the dangers of using the Internet;

(c) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and

(d) how a consumer can monitor the Internet usage of family members.

(2) Money appropriated under Subsection (1) shall be paid by the Division of Consumer Protection to a person only if:

(a) the person is a nonprofit organization; and

(b) the person agrees to spend private money amounting to two times the amount of money provided by the Division of Consumer Protection during each fiscal year in accordance with Subsection (1).

(3) In administering any money appropriated for use under this section, the Division of Consumer Protection shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 15. Section **14-1-18** is amended to read:

14-1-18. Definitions -- Application of Procurement Code to payment and performance bonds.

(1) (a) For purposes of this chapter, "political subdivision" means any county, city, town, school district, local district, special service district, community development and renewal agency, public corporation, institution of higher education of the state, public agency of any political subdivision, and, to the extent provided by law, any other entity which expends public funds for construction.

(b) For purposes of applying Section ~~[63G-6-505]~~ 63G-6a-1103 to a political subdivision, "state" includes "political subdivision."

(2) ~~[Section 63G-6-505]~~ Notwithstanding any provision of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, Section 63G-6a-1103 applies to all contracts for the construction, alteration, or repair of any public building or public work of the state or a political subdivision of the state.

Section 16. Section **17-16a-4** is amended to read:

17-16a-4. Prohibited use of official position -- Exception.

(1) Except as provided in Subsection (3), it is an offense for an elected or appointed officer, under circumstances not amounting to a violation of Section ~~[63G-6-1001]~~ 63G-6a-2304 or 76-8-105, to:

(a) disclose confidential information acquired by reason of the officer's official position or use that information to secure special privileges or exemptions for himself or others;

(b) use or attempt to use the officer's official position to secure special privileges for the officer or for others; or

(c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for the officer or for another, if the gift or loan tends to influence the officer in the discharge of the officer's official duties.

(2) This section is inapplicable to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented;

(c) any bona fide loan made in the ordinary course of business; or

(d) political campaign contributions actually used in a political campaign.

(3) A member of a county legislative body who is also a member of the governing board of a provider of mental health or substance abuse services under contract with the county does not commit an offense under Subsection (1)(a) or (b) by discharging, in good faith, the duties and responsibilities of each position, if the county legislative body member does not participate in the process of selecting the mental health or substance abuse service provider.

Section 17. Section **17-43-202** is amended to read:

17-43-202. Local substance abuse authorities -- Requirements prior to distributing public funds.

(1) Each local substance abuse authority shall award all public funds in compliance with:

(a) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or

(b) a county procurement ordinance that requires similar procurement practices.

(2) If all initial bids on the project are rejected, the authority shall publish a new invitation to bid. If no satisfactory bid is received by the authority when the bids received from the second invitation are opened, the authority may execute a contract without requiring competitive bidding.

(3) A local substance abuse authority need not comply with the procurement provisions of this section when it disburses public funds to another political subdivision of the state or an institution of higher education of the state.

(4) Each contract awarded by a local substance abuse authority shall be for a fixed amount and limited period. A contract may be modified due to changes in available funding for the same contract purpose without competition.

Section 18. Section **17-43-302** is amended to read:

17-43-302. Local mental health authorities -- Requirements prior to distributing public funds.

(1) Each local mental health authority shall award all public funds by complying with the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code, or by complying with a county procurement ordinance which requires similar procurement practices.

(2) If all initial bids on the project are rejected, the authority shall publish a new invitation to bid in the manner specified in this section. If no satisfactory bid is received by the authority when the bids received from the second invitation are opened, the authority may execute a contract without requiring competitive bidding.

(3) The local mental health authority need not comply with the procurement provisions of this section when it disburses public funds to another political subdivision of the state or an institution of higher education of the state.

(4) Each contract awarded by a local mental health authority shall be for a fixed amount and limited period. A contract may be modified due to changes in available funding for the same contract purpose without competition.

Section 19. Section **17-53-225** is amended to read:

17-53-225. County legislative body may adopt Utah Procurement Code -- Retention of records.

(1) A county legislative body may adopt any or all of the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that code.

(2) Whenever any county is required by law to receive bids for purchases, construction, repairs, or any other purpose requiring the expenditure of funds, that county shall keep on file all bids received, together with proof of advertisement by publication or otherwise, for:

(a) at least three years following the letting of any contract pursuant to those bids; or

(b) three years following the first advertisement for the bids, if all bids pursuant to that advertisement are rejected.

Section 20. Section **17-53-313** is amended to read:

17-53-313. Hiring of professional architect, engineer, or surveyor.

Notwithstanding the adoption of some or all of the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, under Section 17-53-225, each county executive that engages the services of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement:

(1) shall consider, as a minimum, in the selection process:

- 898 (a) the qualifications, experience, and background of each firm submitting a proposal;
899 (b) the specific individuals assigned to the project and the time commitments of each to
900 the project; and
901 (c) the project schedule and the approach to the project that the firm will take; and
902 (2) may engage the services of a professional architect, engineer, or surveyor based on
903 the criteria under Subsection (1) rather than solely on lowest cost.

904 Section 21. Section **17B-1-108** is amended to read:

905 **17B-1-108. Restrictions on local district procurement of architect-engineer**
906 **services.**

907 (1) As used in this section:

908 (a) "Architect-engineer services" means those professional services within the scope of
909 the practice of architecture as defined in Section 58-3a-102.

910 (b) "Engineer services" means those professional services within the scope of the
911 practice of professional engineering as defined in Section 58-22-102.

912 (2) When a local district elects to obtain architect services or engineering services by
913 using a competitive procurement process and has provided public notice of its competitive
914 procurement process:

915 (a) a higher education entity, or any part of one, may not submit a proposal in response
916 to the local district's competitive procurement process; and

917 (b) the local district may not award a contract to perform the architect services or
918 engineering services solicited in the competitive procurement process to a higher education
919 entity or any part of one.

920 (3) Notwithstanding Subsection [~~63G-6-104(3)(d)~~] 63G-6a-105(3), each local district
921 board that engages the services of a professional architect, engineer, or surveyor and considers
922 more than one such professional for the engagement:

923 (a) shall consider, as a minimum, in the selection process:

- 924 (i) the qualifications, experience, and background of each firm submitting a proposal;
925 (ii) the specific individuals assigned to the project and the time commitments of each

to the project; and

(iii) the project schedule and the approach to the project that the firm will take; and

(b) may engage the services of a professional architect, engineer, or surveyor based on the criteria under Subsection (3)(a) rather than solely on lowest cost.

Section 22. Section **17B-2a-818** is amended to read:

17B-2a-818. Requirements applicable to public transit district contracts.

(1) A public transit district shall comply with the applicable provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

(2) If construction of a district facility or work exceeds \$750,000, the construction shall be let as provided in:

(a) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

(b) Section 17B-2a-818.5.

Section 23. Section **17B-2a-818.5** is amended to read:

17B-2a-818.5. Contracting powers of public transit districts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the public transit district on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the

954 amount of \$1,500,000 or greater.

955 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
956 \$750,000 or greater.

957 (3) This section does not apply if:

958 (a) the application of this section jeopardizes the receipt of federal funds;

959 (b) the contract is a sole source contract; or

960 (c) the contract is an emergency procurement.

961 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
962 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
963 threshold required by Subsection (2).

964 (b) A person who intentionally uses change orders or contract modifications to
965 circumvent the requirements of Subsection (2) is guilty of an infraction.

966 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
967 district that the contractor has and will maintain an offer of qualified health insurance coverage
968 for the contractor's employees and the employee's dependents during the duration of the
969 contract.

970 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
971 shall demonstrate to the public transit district that the subcontractor has and will maintain an
972 offer of qualified health insurance coverage for the subcontractor's employees and the
973 employee's dependents during the duration of the contract.

974 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
975 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
976 the public transit district under Subsection (6).

977 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
978 requirements of Subsection (5)(b).

979 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
980 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
981 the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The public transit district shall adopt ordinances:

(a) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(b) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with

1010 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

1011 (D) monetary penalties which may not exceed 50% of the amount necessary to
1012 purchase qualified health insurance coverage for employees and dependents of employees of
1013 the contractor or subcontractor who were not offered qualified health insurance coverage
1014 during the duration of the contract; and

1015 (iii) a website on which the district shall post the benchmark for the qualified health
1016 insurance coverage identified in Subsection (1)(c).

1017 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
1018 or subcontractor who intentionally violates the provisions of this section shall be liable to the
1019 employee for health care costs that would have been covered by qualified health insurance
1020 coverage.

1021 (ii) An employer has an affirmative defense to a cause of action under Subsection
1022 (7)(a)(i) if:

1023 (A) the employer relied in good faith on a written statement of actuarial equivalency
1024 provided by an:

1025 (I) actuary; or

1026 (II) underwriter who is responsible for developing the employer group's premium rates;
1027 or

1028 (B) a department or division determines that compliance with this section is not
1029 required under the provisions of Subsection (3) or (4).

1030 (b) An employee has a private right of action only against the employee's employer to
1031 enforce the provisions of this Subsection (7).

1032 (8) Any penalties imposed and collected under this section shall be deposited into the
1033 Medicaid Restricted Account created in Section 26-18-402.

1034 (9) The failure of a contractor or subcontractor to provide qualified health insurance
1035 coverage as required by this section:

1036 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1037 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,

Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 24. Section **17D-1-106** is amended to read:

17D-1-106. Special service districts subject to other provisions.

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) Sections 17B-1-105, 17B-1-107, 17B-1-108, [~~17B-1-109~~] 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, 17B-1-118, 17B-1-119, 17B-1-120, and 17B-1-121;

(b) Subsections 17B-1-301(3) and (4), Sections 17B-1-304, 17B-1-305, 17B-1-306, 17B-1-307, 17B-1-310, 17B-1-312, 17B-1-313, and 17B-1-314;

(c) Section 20A-1-512;

(d) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(e) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(f) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(g) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

Section 25. Section **17D-2-108** is amended to read:

17D-2-108. Other statutory provisions.

(1) This chapter is supplemental to existing laws relating to a local entity's acquisition, use, maintenance, management, or operation of a project.

(2) Except as provided in this chapter, a local entity or local building authority that complies with the provisions of this chapter need not comply with any other statutory provision concerning the acquisition, construction, use, or maintenance of a project, including:

(a) a statute relating to public bidding; and

- 1066 (b) Title 63G, Chapter [6] 6a, Utah Procurement Code.
- 1067 (3) A local building authority is, to the same extent as if it were a local district, subject
- 1068 to and governed by:
- 1069 (a) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;
- 1070 (b) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and
- 1071 (c) Section 17B-1-108.
- 1072 Section 26. Section **19-1-206** is amended to read:
- 1073 **19-1-206. Contracting powers of department -- Health insurance coverage.**
- 1074 (1) For purposes of this section:
- 1075 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
- 1076 34A-2-104 who:
- 1077 (i) works at least 30 hours per calendar week; and
- 1078 (ii) meets employer eligibility waiting requirements for health care insurance which
- 1079 may not exceed the first day of the calendar month following 90 days from the date of hire.
- 1080 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
- 1081 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.
- 1082 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
- 1083 (2) (a) Except as provided in Subsection (3), this section applies to a design or
- 1084 construction contract entered into by or delegated to the department or a division or board of
- 1085 the department on or after July 1, 2009, and to a prime contractor or subcontractor in
- 1086 accordance with Subsection (2)(b).
- 1087 (b) (i) A prime contractor is subject to this section if the prime contract is in the
- 1088 amount of \$1,500,000 or greater.
- 1089 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
- 1090 \$750,000 or greater.
- 1091 (3) This section does not apply to contracts entered into by the department or a division
- 1092 or board of the department if:
- 1093 (a) the application of this section jeopardizes the receipt of federal funds;

- 1094 (b) the contract or agreement is between:
- 1095 (i) the department or a division or board of the department; and
- 1096 (ii) (A) another agency of the state;
- 1097 (B) the federal government;
- 1098 (C) another state;
- 1099 (D) an interstate agency;
- 1100 (E) a political subdivision of this state; or
- 1101 (F) a political subdivision of another state;
- 1102 (c) the executive director determines that applying the requirements of this section to a
- 1103 particular contract interferes with the effective response to an immediate health and safety
- 1104 threat from the environment; or
- 1105 (d) the contract is:
- 1106 (i) a sole source contract; or
- 1107 (ii) an emergency procurement.
- 1108 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
- 1109 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
- 1110 threshold required by Subsection (2).
- 1111 (b) A person who intentionally uses change orders or contract modifications to
- 1112 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 1113 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
- 1114 director that the contractor has and will maintain an offer of qualified health insurance
- 1115 coverage for the contractor's employees and the employees' dependents during the duration of
- 1116 the contract.
- 1117 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
- 1118 demonstrate to the executive director that the subcontractor has and will maintain an offer of
- 1119 qualified health insurance coverage for the subcontractor's employees and the employees'
- 1120 dependents during the duration of the contract.
- 1121 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration

of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section that shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

1150 (III) an underwriter who is responsible for developing the employer group's premium
1151 rates;

1152 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
1153 violates the provisions of this section, which may include:

1154 (A) a three-month suspension of the contractor or subcontractor from entering into
1155 future contracts with the state upon the first violation;

1156 (B) a six-month suspension of the contractor or subcontractor from entering into future
1157 contracts with the state upon the second violation;

1158 (C) an action for debarment of the contractor or subcontractor in accordance with
1159 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

1160 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
1161 of the amount necessary to purchase qualified health insurance coverage for an employee and
1162 the dependents of an employee of the contractor or subcontractor who was not offered qualified
1163 health insurance coverage during the duration of the contract; and

1164 (iii) a website on which the department shall post the benchmark for the qualified
1165 health insurance coverage identified in Subsection (1)(c).

1166 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
1167 subcontractor who intentionally violates the provisions of this section shall be liable to the
1168 employee for health care costs that would have been covered by qualified health insurance
1169 coverage.

1170 (ii) An employer has an affirmative defense to a cause of action under Subsection
1171 (7)(a)(i) if:

1172 (A) the employer relied in good faith on a written statement of actuarial equivalency
1173 provided by:

1174 (I) an actuary; or

1175 (II) an underwriter who is responsible for developing the employer group's premium
1176 rates; or

1177 (B) the department determines that compliance with this section is not required under

1178 the provisions of Subsection (3) or (4).

1179 (b) An employee has a private right of action only against the employee's employer to
1180 enforce the provisions of this Subsection (7).

1181 (8) Any penalties imposed and collected under this section shall be deposited into the
1182 Medicaid Restricted Account created in Section 26-18-402.

1183 (9) The failure of a contractor or subcontractor to provide qualified health insurance
1184 coverage as required by this section:

1185 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1186 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
1187 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

1188 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1189 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1190 or construction.

1191 Section 27. Section **20A-11-701** is amended to read:

1192 **20A-11-701. Campaign financial reporting by corporations -- Filing requirements**
1193 **-- Statement contents.**

1194 (1) (a) Each corporation that has made expenditures for political purposes that total at
1195 least \$750 during a calendar year shall file a verified financial statement with the lieutenant
1196 governor's office:

1197 (i) on January 10, reporting expenditures as of December 31 of the previous year;

1198 (ii) seven days before the regular primary election date;

1199 (iii) on August 31; and

1200 (iv) seven days before the regular general election date.

1201 (b) The corporation shall report:

1202 (i) a detailed listing of all expenditures made since the last statement;

1203 (ii) for financial statements filed under Subsections (1)(a)(ii) through (iv), all

1204 expenditures as of five days before the required filing date of the financial statement; and

1205 (iii) whether the corporation, including an officer of the corporation, director of the

1206 corporation, or person with at least 10% ownership in the corporation:

1207 (A) has bid since the last financial statement on a contract, as defined in Section
1208 ~~[63G-6-103]~~ 63G-6a-103, in excess of \$100,000;

1209 (B) is currently bidding on a contract, as defined in Section ~~[63G-6-103]~~ 63G-6a-103,
1210 in excess of \$100,000; or

1211 (C) is a party to a contract, as defined in Section ~~[63G-6-103]~~ 63G-6a-103, in excess of
1212 \$100,000.

1213 (c) The corporation need not file a financial statement under this section if the
1214 corporation made no expenditures during the reporting period.

1215 (2) The financial statement shall include:

1216 (a) the name and address of each reporting entity that received an expenditure from the
1217 corporation, and the amount of each expenditure;

1218 (b) the total amount of expenditures disbursed by the corporation; and

1219 (c) a statement by the corporation's treasurer or chief financial officer certifying the
1220 accuracy of the financial statement.

1221 Section 28. Section **26-8a-405.3** is amended to read:

1222 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

1223 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under
1224 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited
1225 through a request for proposal and the provisions of this section.

1226 (b) The governing body of the political subdivision shall approve the request for
1227 proposal prior to the notice of the request for proposals under Subsection (1)(c).

1228 (c) (i) Notice of the request for proposals shall be published:

1229 (A) at least once a week for three consecutive weeks in a newspaper of general
1230 circulation published in the county; or

1231 (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at
1232 least five public places in the county; and

1233 (ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the political subdivision shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) A political subdivision shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the political subdivision may issue addenda to the request for proposals. An addenda to a request for proposal shall be finalized and posted by the political subdivision at least 45 days before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the most responsible offeror as defined in ~~[Subsection 63G-6-103(24)]~~ Section 63G-6a-103.

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the political subdivision, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision issuing the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) A political subdivision may reject all of the competitive proposals.

1262 (4) In seeking competitive sealed proposals and awarding contracts under this section,
1263 a political subdivision:

1264 (a) shall apply the public convenience and necessity factors listed in Subsections
1265 26-8a-408(2) through (6);

1266 (b) shall require the applicant responding to the proposal to disclose how the applicant
1267 will meet performance standards in the request for proposal;

1268 (c) may not require or restrict an applicant to a certain method of meeting the
1269 performance standards, including:

1270 (i) requiring ambulance medical personnel to also be a firefighter; or

1271 (ii) mandating that offerors use fire stations or dispatch services of the political
1272 subdivision;

1273 (d) shall require an applicant to submit the proposal:

1274 (i) based on full cost accounting in accordance with generally accepted accounting
1275 principals; and

1276 (ii) if the applicant is a governmental entity, in addition to the requirements of
1277 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
1278 in compliance with the State of Utah Legal Compliance Audit Guide; and

1279 (e) shall set forth in the request for proposal:

1280 (i) the method for determining full cost accounting in accordance with generally
1281 accepted accounting principles, and require an applicant to submit the proposal based on such
1282 full cost accounting principles;

1283 (ii) guidelines established to further competition and provider accountability; and

1284 (iii) a list of the factors that will be considered by the political subdivision in the award
1285 of the contract, including by percentage, the relative weight of the factors established under this
1286 Subsection (4)(e), which may include such things as:

1287 (A) response times;

1288 (B) staging locations;

1289 (C) experience;

1290 (D) quality of care; and

1291 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

1292 (5) (a) Notwithstanding ~~[the provisions of Subsection 63G-6-104(3), the]~~ any provision
1293 of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, the provisions of Title 63G,
1294 Chapter ~~[6, Part 8, Legal and Contractual Remedies]~~ 6a, Utah Procurement Code, apply to the
1295 procurement process required by this section, except as provided in Subsection (5)(c).

1296 (b) ~~[The Procurement Appeals Board created in Section 63G-6-807]~~ An appeals board,
1297 as defined in Section 63G-6a-103, shall have jurisdiction to review and determine an appeal of
1298 an offeror under this section in the same manner as provided in Section ~~[63G-6-810]~~
1299 63G-6a-1703.

1300 (c) (i) An offeror may appeal the solicitation or award as provided by the political
1301 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror
1302 may appeal under the provisions of Subsections (5)(a) and (b).

1303 (ii) The factual determination required by Subsection ~~[63G-6-813]~~ 63G-6a-1708(1)
1304 shall be based on whether the solicitation or award was made in accordance with the
1305 procedures set forth in this section and Section 26-8a-405.2.

1306 (d) The determination of an issue of fact by the appeals board shall be final and
1307 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section
1308 ~~[63G-6-813]~~ 63G-6a-1708.

1309 Section 29. Section **26-8a-405.5** is amended to read:

1310 **26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

1311 (1) (a) The department shall issue a request for proposal for non-911 services in a
1312 geographic service area if the department receives a request from a political subdivision under
1313 Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

1314 (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be
1315 solicited through a request for proposal and the provisions of this section.

1316 (c) (i) Notice of the request for proposals shall be published:

1317 (A) at least once a week for three consecutive weeks in a newspaper of general

circulation published in the county; or

(B) if there is no such newspaper, then notice shall be posted for at least 20 days in at least five public places in the county; and

(ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the department shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) The department shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the department may issue addenda to the request for proposals. An addenda to a request for proposal shall be finalized and posted by the department at least 45 days before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) The department may select an applicant approved by the department under Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as defined in [~~Subsection 63G-6-103(24)~~] Section 63G-6a-103.

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the public, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision responding to the request for competitive

1346 sealed proposals, or any other public entity or entities, any private person or entity, or any
1347 combination thereof.

1348 (c) The department may reject all of the competitive proposals.

1349 (4) In seeking competitive sealed proposals and awarding contracts under this section,
1350 the department:

1351 (a) shall consider the public convenience and necessity factors listed in Subsections
1352 26-8a-408(2) through (6);

1353 (b) shall require the applicant responding to the proposal to disclose how the applicant
1354 will meet performance standards in the request for proposal;

1355 (c) may not require or restrict an applicant to a certain method of meeting the
1356 performance standards, including:

1357 (i) requiring ambulance medical personnel to also be a firefighter; or

1358 (ii) mandating that offerors use fire stations or dispatch services of the political
1359 subdivision;

1360 (d) shall require an applicant to submit the proposal:

1361 (i) based on full cost accounting in accordance with generally accepted accounting
1362 principals; and

1363 (ii) if the applicant is a governmental entity, in addition to the requirements of
1364 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
1365 in compliance with the State of Utah Legal Compliance Audit Guide; and

1366 (e) shall set forth in the request for proposal:

1367 (i) the method for determining full cost accounting in accordance with generally
1368 accepted accounting principles, and require an applicant to submit the proposal based on such
1369 full cost accounting principles;

1370 (ii) guidelines established to further competition and provider accountability; and

1371 (iii) a list of the factors that will be considered by the department in the award of the
1372 contract, including by percentage, the relative weight of the factors established under this
1373 Subsection (4)(e), which may include such things as:

- 1374 (A) response times;
1375 (B) staging locations;
1376 (C) experience;
1377 (D) quality of care; and
1378 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
1379 (5) A license issued under this section:
1380 (a) is for the exclusive geographic service area approved by the department;
1381 (b) is valid for four years;
1382 (c) is not subject to a request for license from another applicant under the provisions of
1383 Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license
1384 is revoked under Section 26-8a-504;
1385 (d) is subject to supervision by the department under Sections 26-8a-503 and
1386 26-8a-504; and
1387 (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections
1388 26-8a-406 through 26-8a-409.

1389 Section 30. Section **26-10-8** is amended to read:

1390 **26-10-8. Request for proposal required for non-state supplied services.**

1391 (1) Funds provided to the department through Sections 51-9-201 and 59-14-204 to be
1392 used to provide services, shall be awarded to non-governmental entities based on a competitive
1393 process consistent with Title 63G, Chapter [6] 6a, Utah Procurement Code.

1394 (2) Beginning July 1, 2010, and not more than every five years thereafter, the
1395 department shall issue requests for proposals for new or renewing contracts to award funding
1396 for programs under Subsection (1).

1397 Section 31. Section **26-10b-102** is amended to read:

1398 **26-10b-102. Department to award grants and contracts -- Applications.**

1399 (1) (a) Within appropriations specified by the Legislature for this purpose, the
1400 department may make grants to public and nonprofit entities for the cost of operation of
1401 providing primary health care services to medically underserved populations.

1402 (b) The department may, as funding permits, contract with community based
1403 organizations for the purpose of developing culturally and linguistically appropriate programs
1404 and services for low income and medically underserved populations through a pilot program to
1405 accomplish one or more of the following:

1406 (i) to educate individuals:

1407 (A) to use private and public health care coverage programs, products, services, and
1408 resources in a timely, effective, and responsible manner;

1409 (B) to make prudent use of private and public health care resources;

1410 (C) to pursue preventive health care, health screenings, and disease management; and

1411 (D) to locate health care programs and services;

1412 (ii) to assist individuals to develop:

1413 (A) personal health management;

1414 (B) self-sufficiency in daily care; and

1415 (C) life and disease management skills;

1416 (iii) to support translation of health materials and information;

1417 (iv) to facilitate an individual's access to primary care services and providers, including
1418 mental health services; and

1419 (v) to measure and report empirical results of the pilot project.

1420 (2) (a) Grants by the department shall be awarded based on:

1421 (i) applications submitted to the department in the manner and form prescribed by the
1422 department; and

1423 (ii) the criteria established in Section 26-10b-103.

1424 (b) The application for a grant under Subsection (2)(a) shall contain:

1425 (i) a requested award amount;

1426 (ii) a budget; and

1427 (iii) a narrative plan of the manner in which the applicant intends to provide the
1428 primary health care services described in Subsection 26-10b-101(7).

1429 (c) A contract bid for a service under Subsection (1)(b):

1430 (i) shall be awarded in accordance with Title 63G, Chapter [6] 6a, Utah Procurement
1431 Code;

1432 (ii) shall include the information described in Section 26-10b-103; and

1433 (iii) is subject to Subsection (3) [~~of this section~~].

1434 (3) (a) An applicant under this chapter shall demonstrate to the department that the
1435 applicant will not deny services to a person because of the person's inability to pay for the
1436 services.

1437 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
1438 person receiving services, a third party, or a government agency if:

1439 (i) the applicant is authorized to charge for the services; and

1440 (ii) the person, third party, or government agency is under legal obligation to pay the
1441 charges.

1442 (4) The department shall maximize the use of federal matching funds received for
1443 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

1444 Section 32. Section **26-18-2.6** is amended to read:

1445 **26-18-2.6. Dental benefits.**

1446 (1) (a) The division shall establish a competitive bid process to bid out Medicaid dental
1447 benefits under this chapter.

1448 (b) The division may bid out the Medicaid dental benefits separately from other
1449 program benefits.

1450 (2) The division shall use the following criteria to evaluate dental bids:

1451 (a) ability to manage dental expenses;

1452 (b) proven ability to handle dental insurance;

1453 (c) efficiency of claim paying procedures;

1454 (d) provider contracting, discounts, and adequacy of network; and

1455 (e) other criteria established by the department.

1456 (3) The division shall request bids for the program's benefits:

1457 (a) in 2011; and

- 1458 (b) at least once every five years thereafter.
- 1459 (4) The division's contract with dental plans for the program's benefits shall include
- 1460 risk sharing provisions in which the dental plan must accept 100% of the risk for any difference
- 1461 between the division's premium payments per client and actual dental expenditures.
- 1462 (5) The division may not award contracts to:
- 1463 (a) more than three responsive bidders under this section; or
- 1464 (b) an insurer that does not have a current license in the state.
- 1465 (6) (a) The division may cancel the request for proposals if:
- 1466 (i) there are no responsive bidders; or
- 1467 (ii) the division determines that accepting the bids would increase the program's costs.
- 1468 (b) If the division cancels the request for proposals under Subsection (6)(a), the
- 1469 division shall report to the Health and Human Services Committee regarding the reasons for
- 1470 the decision.
- 1471 (7) Title 63G, Chapter [6] 6a, Utah Procurement Code, shall apply to this section.
- 1472 Section 33. Section **26-40-110** is amended to read:
- 1473 **26-40-110. Managed care -- Contracting for services.**
- 1474 (1) Program benefits provided to enrollees under the program, as described in Section
- 1475 26-40-106, shall be delivered in a managed care system if the department determines that
- 1476 adequate services are available where the enrollee lives or resides.
- 1477 (2) (a) The department shall use the following criteria to evaluate bids from health
- 1478 plans:
- 1479 (i) ability to manage medical expenses, including mental health costs;
- 1480 (ii) proven ability to handle accident and health insurance;
- 1481 (iii) efficiency of claim paying procedures;
- 1482 (iv) proven ability for managed care and quality assurance;
- 1483 (v) provider contracting and discounts;
- 1484 (vi) pharmacy benefit management;
- 1485 (vii) an estimate of total charges for administering the pool;

1486 (viii) ability to administer the pool in a cost-efficient manner;
1487 (ix) the ability to provide adequate providers and services in the state; and
1488 (x) other criteria established by the department.

1489 (b) The dental benefits required by Section 26-40-106 may be bid out separately from
1490 other program benefits.

1491 (c) Except for dental benefits, the department shall request bids for the program's
1492 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.
1493 The department shall request bids for the program's benefits at least once every five years
1494 thereafter.

1495 (d) The department's contract with health plans for the program's benefits shall include
1496 risk sharing provisions in which the health plan shall accept at least 75% of the risk for any
1497 difference between the department's premium payments per client and actual medical
1498 expenditures.

1499 (3) The executive director shall report to and seek recommendations from the Health
1500 Advisory Council created in Section 26-1-7.5:

1501 (a) if the division receives less than two bids or proposals under this section that are
1502 acceptable to the division or responsive to the bid; and

1503 (b) before awarding a contract to a managed care system.

1504 (4) (a) The department shall award contracts to responsive bidders if the department
1505 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

1506 (b) The department may contract with the Group Insurance Division within the Utah
1507 State Retirement Office to provide services under Subsection (1) if:

1508 (i) the executive director seeks the recommendation of the Health Advisory Council
1509 under Subsection (3); and

1510 (ii) the executive director determines that the bids were not acceptable to the
1511 department.

1512 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)
1513 is not subject to the risk sharing required by Subsection (2)(d).

1514 (5) Title 63G, Chapter [6] 6a, Utah Procurement Code, shall apply to this section.

1515 Section 34. Section **30-3-11.3** is amended to read:

1516 **30-3-11.3. Mandatory educational course for divorcing parents -- Purpose --**

1517 **Curriculum -- Exceptions.**

1518 (1) The Judicial Council shall approve and implement a mandatory course for
1519 divorcing parents in all judicial districts. The mandatory course is designed to educate and
1520 sensitize divorcing parties to their children's needs both during and after the divorce process.

1521 (2) The Judicial Council shall adopt rules to implement and administer this program.

1522 (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a
1523 mandatory course on their children's needs after filing a complaint for divorce and receiving a
1524 docket number, unless waived under Section 30-3-4. If that requirement is waived, the court
1525 may permit the divorce action to proceed.

1526 (4) The court may require unmarried parents to attend this educational course when
1527 those parents are involved in a visitation or custody proceeding before the court.

1528 (5) The mandatory course shall instruct both parties:

1529 (a) about divorce and its impacts on:

1530 (i) their child or children;

1531 (ii) their family relationship; and

1532 (iii) their financial responsibilities for their child or children; and

1533 (b) that domestic violence has a harmful effect on children and family relationships.

1534 (6) The Administrative Office of the Courts shall administer the course pursuant to
1535 Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts and
1536 organize the program in each of Utah's judicial districts. The contracts shall provide for the
1537 recoupment of administrative expenses through the costs charged to individual parties,
1538 pursuant to Subsection (8).

1539 (7) A certificate of completion constitutes evidence to the court of course completion
1540 by the parties.

1541 (8) (a) Each party shall pay the costs of the course to the independent contractor

providing the course at the time and place of the course. A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 51-9-408.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

(10) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 35. Section **30-3-11.4** is amended to read:

30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Exceptions.

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children are not required, but may choose to attend the course. The purpose of the course shall be to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(4) The clerk of the court shall provide notice to a petitioner of the requirement for the

course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(5) The divorce orientation course shall be neutral, unbiased, at least one hour in duration, and include:

(a) options available as alternatives to divorce;

(b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;

(c) resources available to improve or strengthen the marriage;

(d) a discussion of the positive and negative consequences of divorce;

(e) a discussion of the process of divorce;

(f) options available for proceeding with a divorce, including:

(i) mediation;

(ii) collaborative law; and

(iii) litigation; and

(g) a discussion of post-divorce resources.

(6) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(7) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts.

(8) Each participant shall pay the costs of the course, which may not exceed \$20, to the independent contractor providing the course at the time and place of the course.

(a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section 51-9-408.

(b) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion. The provider shall be reimbursed for its costs by the Administrative Office of the Courts. A petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

1598 (9) Appropriations from the General Fund to the Administrative Office of the Courts
1599 for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is
1600 determined to be impecunious as provided in Subsection (8)(b).

1601 (10) The Online Court Assistance Program shall include instructions with the forms for
1602 divorce which inform the petitioner of the requirement of this section.

1603 (11) Both parties shall attend a divorce orientation course before a divorce decree may
1604 be entered, unless waived by the court. A certificate of completion constitutes evidence to the
1605 court of course completion by the parties.

1606 (12) It shall be an affirmative defense in all divorce actions that the divorce orientation
1607 requirement was not complied with, and the action may not continue until a party has
1608 complied.

1609 (13) The Administrative Office of the Courts shall adopt a program to evaluate the
1610 effectiveness of the mandatory educational course. Progress reports shall be provided if
1611 requested by the Judiciary Interim Committee.

1612 Section 36. Section **30-3-38** is amended to read:

1613 **30-3-38. Expedited Parent-time Enforcement Program.**

1614 (1) There is established an Expedited Parent-time Enforcement Program in the third
1615 judicial district to be administered by the Administrative Office of the Courts.

1616 (2) As used in this section:

1617 (a) "Mediator" means a person who:

1618 (i) is qualified to mediate parent-time disputes under criteria established by the
1619 Administrative Office of the Courts; and

1620 (ii) agrees to follow billing guidelines established by the Administrative Office of the
1621 Courts and this section.

1622 (b) "Services to facilitate parent-time" or "services" means services designed to assist
1623 families in resolving parent-time problems through:

1624 (i) counseling;

1625 (ii) supervised parent-time;

(iii) neutral drop-off and pick-up;

(iv) educational classes; and

(v) other related activities.

(3) (a) If a parent files a motion in the third district court alleging that court-ordered parent-time rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this program for assignment to a mediator, unless a parent is incarcerated or otherwise unavailable. Unless the court rules otherwise, a parent residing outside of the state is not unavailable. The director of the program for the courts, the court, or the mediator may excuse either party from the requirement to mediate for good cause.

(b) Upon receipt of a case, the mediator shall:

(i) meet with the parents to address parent-time issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on parent-time between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate parent-time if:

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

(d) At any time during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the program for referral to the judge or court commissioner to whom the case was assigned under Subsection (3)(a) if:

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation and:

(A) the parents have received services to facilitate parent-time;

(B) both parents object to receiving services to facilitate parent-time; or

1654 (C) the parents are unlikely to benefit from receiving services to facilitate parent-time.

1655 (e) Upon receiving a case from the administrator of the program, a judge or court
1656 commissioner may:

1657 (i) review the agreement of the parents and, if acceptable, sign it as an order;

1658 (ii) order the parents to receive services to facilitate parent-time;

1659 (iii) proceed with the case; or

1660 (iv) take other appropriate action.

1661 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a
1662 child who is the subject of a parent-time order against the other parent or a member of the other
1663 parent's household to a mediator or service provider, the mediator or service provider shall
1664 immediately report that information to:

1665 (i) the judge assigned to the case who may immediately issue orders and take other
1666 appropriate action to resolve the allegation and protect the child; and

1667 (ii) the Division of Child and Family Services within the Department of Human
1668 Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect
1669 Reporting Requirements.

1670 (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time
1671 rights or a member of that parent's household, parent-time by that parent shall, pursuant to an
1672 order of the court, be supervised until:

1673 (i) the allegation has been resolved; or

1674 (ii) a court orders otherwise.

1675 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to
1676 mediate parent-time problems and a service provider may continue to provide services to
1677 facilitate parent-time unless otherwise ordered by a court.

1678 (5) (a) The Department of Human Services may contract with one or more entities in
1679 accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, to provide:

1680 (i) services to facilitate parent-time;

1681 (ii) case management services; and

1682 (iii) administrative services.

1683 (b) An entity who contracts with the Department of Human Services under Subsection

1684 (5)(a) shall:

1685 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

1686 (ii) agree to follow billing guidelines established by the Department of Human Services

1687 and this section.

1688 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

1689 (i) reduced to a sum certain;

1690 (ii) divided equally between the parents; and

1691 (iii) charged against each parent taking into account the ability of that parent to pay

1692 under billing guidelines adopted in accordance with this section.

1693 (b) A judge may order a parent to pay an amount in excess of that provided for in

1694 Subsection (6)(a) if the parent:

1695 (i) failed to participate in good faith in mediation or services to facilitate parent-time;

1696 or

1697 (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

1698 (c) (i) The cost of mediation and services to facilitate parent-time may be charged to

1699 parents at periodic intervals.

1700 (ii) Mediation and services to facilitate parent-time may only be terminated on the

1701 ground of nonpayment if both parents are delinquent.

1702 (7) (a) The Judicial Council may make rules to implement and administer the

1703 provisions of this program related to mediation.

1704 (b) The Department of Human Services may make rules to implement and administer

1705 the provisions of this program related to services to facilitate parent-time.

1706 (8) (a) The Administrative Office of the Courts shall adopt outcome measures to

1707 evaluate the effectiveness of the mediation component of this program. Progress reports shall

1708 be provided to the Judiciary Interim Committee as requested by the committee.

1709 (b) The Department of Human Services shall adopt outcome measures to evaluate the

effectiveness of the services component of this program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (7)(a) and (b).

(9) The Department of Human Services shall, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures, apply for federal funds as available.

Section 37. Section **31A-29-110** is amended to read:

31A-29-110. Pool administrator -- Selection -- Powers.

(1) The board shall select a pool administrator in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code. The board shall evaluate bids based on criteria established by the board, which shall include:

- (a) ability to manage medical expenses;
- (b) proven ability to handle accident and health insurance;
- (c) efficiency of claim paying procedures;
- (d) marketing and underwriting;
- (e) proven ability for managed care and quality assurance;
- (f) provider contracting and discounts;
- (g) pharmacy benefit management;
- (h) an estimate of total charges for administering the pool; and
- (i) ability to administer the pool in a cost-efficient manner.

(2) A pool administrator may be:

- (a) a health insurer;
- (b) a health maintenance organization;
- (c) a third-party administrator; or
- (d) any person or entity which has demonstrated ability to meet the criteria in

Subsection (1).

(3) (a) The pool administrator shall serve for a period of three years, with two one-year extension options, subject to the terms, conditions, and limitations of the contract between the board and the administrator.

(b) At least one year prior to the expiration of the contract between the board and the pool administrator, the board shall invite all interested parties, including the current pool administrator, to submit bids to serve as the pool administrator.

(c) Selection of the pool administrator for a succeeding period shall be made at least six months prior to the expiration of the period of service under Subsection (3)(a).

(4) The pool administrator is responsible for all operational functions of the pool and shall:

(a) have access to all nonpatient specific experience data, statistics, treatment criteria, and guidelines compiled or adopted by the Medicaid program, the Public Employees Health Plan, the Department of Health, or the Insurance Department, and which are not otherwise declared by statute to be confidential;

(b) perform all marketing, eligibility, enrollment, member agreements, and administrative claim payment functions relating to the pool;

(c) establish, administer, and operate a monthly premium billing procedure for collection of premiums from enrollees;

(d) perform all necessary functions to assure timely payment of benefits to enrollees, including:

(i) making information available relating to the proper manner of submitting a claim for benefits to the pool administrator and distributing forms upon which submission shall be made; and

(ii) evaluating the eligibility of each claim for payment by the pool;

(e) submit regular reports to the board regarding the operation of the pool, the frequency, content, and form of which reports shall be determined by the board;

(f) following the close of each calendar year, determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and

1766 submit a report of this information to the board, the commissioner, and the Division of Finance
1767 on a form prescribed by the commissioner; and

1768 (g) be paid as provided in the plan of operation for expenses incurred in the
1769 performance of the pool administrator's services.

1770 Section 38. Section **31A-29-111** is amended to read:

1771 **31A-29-111. Eligibility -- Limitations.**

1772 (1) (a) Except as provided in Subsection (1)(b), an individual who is not HIPAA
1773 eligible is eligible for pool coverage if the individual:

1774 (i) pays the established premium;

1775 (ii) is a resident of this state; and

1776 (iii) meets the health underwriting criteria under Subsection (5)(a).

1777 (b) Notwithstanding Subsection (1)(a), an individual who is not HIPAA eligible is not
1778 eligible for pool coverage if one or more of the following conditions apply:

1779 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
1780 except as provided in Section 31A-29-112;

1781 (ii) the individual has terminated coverage in the pool, unless:

1782 (A) 12 months have elapsed since the termination date; or

1783 (B) the individual demonstrates that creditable coverage has been involuntarily
1784 terminated for any reason other than nonpayment of premium;

1785 (iii) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

1786 (iv) the individual is an inmate of a public institution;

1787 (v) the individual is eligible for a public health plan, as defined in federal regulations
1788 adopted pursuant to 42 U.S.C. 300gg;

1789 (vi) the individual's health condition does not meet the criteria established under
1790 Subsection (5);

1791 (vii) the individual is eligible for coverage under an employer group that offers a health
1792 benefit plan or a self-insurance arrangement to its eligible employees, dependents, or members
1793 as:

1794 (A) an eligible employee;
1795 (B) a dependent of an eligible employee; or
1796 (C) a member;
1797 (viii) the individual is covered under any other health benefit plan;
1798 (ix) at the time of application, the individual has not resided in Utah for at least 12
1799 consecutive months preceding the date of application; or
1800 (x) the individual's employer pays any part of the individual's health benefit plan
1801 premium, either as an insured or a dependent, for pool coverage.
1802 (2) (a) Except as provided in Subsection (2)(b), an individual who is HIPAA eligible is
1803 eligible for pool coverage if the individual:
1804 (i) pays the established premium; and
1805 (ii) is a resident of this state.
1806 (b) Notwithstanding Subsection (2)(a), a HIPAA eligible individual is not eligible for
1807 pool coverage if one or more of the following conditions apply:
1808 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
1809 except as provided in Section 31A-29-112;
1810 (ii) the individual is eligible for a public health plan, as defined in federal regulations
1811 adopted pursuant to 42 U.S.C. 300gg;
1812 (iii) the individual is covered under any other health benefit plan;
1813 (iv) the individual is eligible for coverage under an employer group that offers a health
1814 benefit plan or self-insurance arrangements to its eligible employees, dependents, or members
1815 as:
1816 (A) an eligible employee;
1817 (B) a dependent of an eligible employee; or
1818 (C) a member;
1819 (v) the pool has paid the maximum lifetime benefit to or on behalf of the individual;
1820 (vi) the individual is an inmate of a public institution; or
1821 (vii) the individual's employer pays any part of the individual's health benefit plan

1822 premium, either as an insured or a dependent, for pool coverage.

1823 (3) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection
1824 (1)(a), an individual whose health care insurance coverage from a state high risk pool with
1825 similar coverage is terminated because of nonresidency in another state is eligible for coverage
1826 under the pool subject to the conditions of Subsections (1)(b)(i) through (viii).

1827 (b) Coverage sought under Subsection (3)(a) shall be applied for within 63 days after
1828 the termination date of the previous high risk pool coverage.

1829 (c) The effective date of this state's pool coverage shall be the date of termination of
1830 the previous high risk pool coverage.

1831 (d) The waiting period of an individual with a preexisting condition applying for
1832 coverage under this chapter shall be waived:

1833 (i) to the extent to which the waiting period was satisfied under a similar plan from
1834 another state; and

1835 (ii) if the other state's benefit limitation was not reached.

1836 (4) (a) If an eligible individual applies for pool coverage within 30 days of being
1837 denied coverage by an individual carrier, the effective date for pool coverage shall be no later
1838 than the first day of the month following the date of submission of the completed insurance
1839 application to the carrier.

1840 (b) Notwithstanding Subsection (4)(a), for individuals eligible for coverage under
1841 Subsection (3), the effective date shall be the date of termination of the previous high risk pool
1842 coverage.

1843 (5) (a) The board shall establish and adjust, as necessary, health underwriting criteria
1844 based on:

1845 (i) health condition; and

1846 (ii) expected claims so that the expected claims are anticipated to remain within
1847 available funding.

1848 (b) The board, with approval of the commissioner, may contract with one or more
1849 providers under Title 63G, Chapter [6] 6a, Utah Procurement Code, to develop underwriting

1850 criteria under Subsection (5)(a).

1851 (c) If an individual is denied coverage by the pool under the criteria established in
1852 Subsection (5)(a), the pool shall issue a certificate of insurability to the individual for coverage
1853 under Subsection 31A-30-108(3).

1854 Section 39. Section **31A-33-104** is amended to read:

1855 **31A-33-104. Workers' Compensation Fund exempted.**

1856 (1) The Workers' Compensation Fund is exempt from the provisions of:

1857 (a) Title 52, Chapter 4, Open and Public Meetings Act;

1858 (b) Title 63G, Chapter 2, Government Records Access and Management Act; and

1859 (c) Title 63A, Utah Administrative Services Code.

1860 (2) The board may specifically exempt the Workers' Compensation Fund from any
1861 provisions of:

1862 (a) Title 67, Chapter 19, Utah State Personnel Management Act; and

1863 (b) Title 63G, Chapter [6] 6a, Utah Procurement Code.

1864 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
1865 govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter
1866 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

1867 Section 40. Section **31A-33-107** is amended to read:

1868 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**
1869 **enterprises.**

1870 (1) The board shall:

1871 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;

1872 (b) receive and act upon financial, management, and actuarial reports covering the
1873 operations of the Workers' Compensation Fund;

1874 (c) ensure that the Workers' Compensation Fund is administered according to law;

1875 (d) examine and approve an annual operating budget for the Workers' Compensation
1876 Fund;

1877 (e) serve as investment trustees and fiduciaries of the Injury Fund;

- 1878 (f) receive and act upon recommendations of the chief executive officer;
- 1879 (g) develop broad policy for the long-term operation of the Workers' Compensation
- 1880 Fund, consistent with its mission and fiduciary responsibility;
- 1881 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating
- 1882 plans that would modify a policyholder's premium;
- 1883 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount
- 1884 of deviation, if any, from standard insurance rates;
- 1885 (j) approve the amount of the dividends, if any, to be returned to policyholders;
- 1886 (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter [6]
- 1887 6a, Utah Procurement Code;
- 1888 (l) develop and publish an annual report to policyholders, the governor, the Legislature,
- 1889 and interested parties that describes the financial condition of the Injury Fund, including a
- 1890 statement of expenses and income and what measures were taken or will be necessary to keep
- 1891 the Injury Fund actuarially sound;
- 1892 (m) establish a fiscal year;
- 1893 (n) determine and establish an actuarially sound price for insurance offered by the
- 1894 fund;
- 1895 (o) establish conflict of interest requirements that govern the board, officers, and
- 1896 employees;
- 1897 (p) establish compensation and reasonable expenses to be paid to directors on the board
- 1898 subject to the requirements of Section 31A-33-106, so that the board may not approve
- 1899 compensation that exceeds the amount described in Subsection 31A-33-106(18)(a)(i)(B); and
- 1900 (q) perform all other acts necessary for the policymaking and oversight of the Workers'
- 1901 Compensation Fund.
- 1902 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board
- 1903 may delegate authority to make daily investment decisions.
- 1904 (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:
- 1905 (a) only if that action is approved by the board; and

1906 (b) subject to the limitations in Section 31A-33-103.5.

1907 Section 41. Section **34A-2-203** is amended to read:

1908 **34A-2-203. Payment of premiums for workers' compensation.**

1909 (1) Until June 30, 2007, a department, commission, board, or other agency of the state
1910 shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.

1911 (2) Beginning July 1, 2007, the state shall secure the payment of workers'
1912 compensation benefits for its employees:

1913 (a) by:

1914 (i) insuring, and keeping insured, the payment of this compensation with the Workers'
1915 Compensation Fund;

1916 (ii) insuring, and keeping insured, the payment of this compensation with any stock
1917 corporation or mutual association authorized to transact the business of workers' compensation
1918 insurance in this state; or

1919 (iii) paying direct compensation as a self-insured employer in the amount, in the
1920 manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease
1921 Act;

1922 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

1923 (c) subject to Subsection (3).

1924 (3) (a) If the state determines to secure the payment of workers' compensation benefits
1925 for its employees by paying direct compensation as a self-insured employer in the amount, in
1926 the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease
1927 Act, the state is:

1928 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

1929 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

1930 (b) If the state chooses to pay workers' compensation benefits for its employees
1931 through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in
1932 accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code.

1933 Section 42. Section **35A-5-202** is amended to read:

1934 **35A-5-202. Contracts with providers.**

1935 (1) In compliance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the
1936 department shall enter into a contract with one or more qualified providers to implement the
1937 workforce improvement plan created under Section 35A-5-201.

1938 (2) A contract entered into under this section shall be:

1939 (a) performance based; and

1940 (b) structured so that the provider receives reimbursement based on:

1941 (i) job development;

1942 (ii) participant placement in jobs;

1943 (iii) wages and benefits provided; and

1944 (iv) participant retention in jobs over at least a 12-month period.

1945 (3) If the department determines through the procurement process that there are no
1946 qualified providers to implement the workforce improvement plan, the department may
1947 implement the plan.

1948 Section 43. Section **38-1-30** is amended to read:

1949 **38-1-30. Third party contract -- Designated agent.**

1950 (1) The division shall contract in accordance with Title 63G, Chapter [6] 6a, Utah
1951 Procurement Code, with a third party to establish and maintain the database for the purposes
1952 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-36.

1953 (2) (a) The third party under contract under this section is the division's designated
1954 agent, and shall develop and maintain a database from the information provided by:

1955 (i) local government entities issuing building permits;

1956 (ii) original contractors;

1957 (iii) subcontractors; and

1958 (iv) other interested persons.

1959 (b) The database shall accommodate filings by third parties on behalf of clients.

1960 (c) The division and the designated agent shall design, develop, and test the database
1961 for full implementation on May 1, 2005.

1962 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1963 division shall make rules and develop procedures for:

1964 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
1965 38-1-31 through 38-1-36;

1966 (b) the designated agent to administer this section, Section 38-1-27, and Sections
1967 38-1-31 through 38-1-36; and

1968 (c) the form of submission of an alternate filing, which may include procedures for
1969 rejecting an illegible or incomplete filing.

1970 (4) (a) The designated agent shall archive computer data files at least semiannually for
1971 auditing purposes.

1972 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1973 division shall make rules to allow the designated agent to periodically archive projects from the
1974 database.

1975 (c) A project shall be archived no earlier than:

1976 (i) one year after the day on which a notice of completion is filed for a project;

1977 (ii) if no notice of completion is filed, two years after the last filing activity for a
1978 project; or

1979 (iii) one year after the day on which a filing is cancelled under Subsection
1980 38-1-32(6)(c) or 38-1-33(2)(c).

1981 (d) The division may audit the designated agent's administration of the database as
1982 often as the division considers necessary.

1983 (5) The designated agent shall carry errors and omissions insurance in the amounts
1984 established by rule made by the division in accordance with Title 63G, Chapter 3, Utah
1985 Administrative Rulemaking Act.

1986 (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry
1987 into the database of information provided in alternate filings.

1988 (b) The designated agent shall meet or exceed standards established by the division for
1989 the accuracy of data entry for alternate filings.

1990 (7) The designated agent is not liable for the correctness of the information contained
1991 in an alternate filing it enters into the database.

1992 Section 44. Section **38-1-39** is amended to read:

1993 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

1994 (1) As used in this section:

1995 (a) "Check" means a payment instrument on a depository institution including:

1996 (i) a check;

1997 (ii) a draft;

1998 (iii) an order; or

1999 (iv) other instrument.

2000 (b) "Depository institution" is as defined in Section 7-1-103.

2001 (c) "Lien claimant" means a person that claims a lien under this chapter.

2002 (d) "Receives payment" means, in the case of a restrictive endorsement, a payee has
2003 endorsed a check and the check is presented to and paid by the depository institution on which
2004 it is drawn.

2005 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that
2006 waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:

2007 (a) (i) executes a waiver and release that is signed by the lien claimant or the lien
2008 claimant's authorized agent; or

2009 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
2010 check that is:

2011 (A) signed by the lien claimant or the lien claimant's authorized agent; and

2012 (B) in substantially the same form set forth in Subsection (4)(d); and

2013 (b) receives payment of the amount identified in the waiver and release or check that
2014 includes the restrictive endorsement:

2015 (i) including payment by a joint payee check; and

2016 (ii) for a progress payment, only to the extent of the payment.

2017 (3) (a) Notwithstanding the language of a waiver and release described in Subsection

2018 (2), Subsection (3)(b) applies if:

2019 (i) the payment given in exchange for any waiver and release of lien is made by check;
2020 and

2021 (ii) the check fails to clear the depository institution on which it is drawn for any
2022 reason.

2023 (b) If the conditions of Subsection (3)(a) are met:

2024 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal
2025 effect; and

2026 (ii) the following will not be affected by the lien claimant's execution of the waiver and
2027 release:

2028 (A) any lien;

2029 (B) any lien right;

2030 (C) any bond right;

2031 (D) any contract right; or

2032 (E) any other right to recover payment afforded to the lien claimant in law or equity.

2033 (4) (a) A waiver and release given by a lien claimant meets the requirements of this
2034 section if it is in substantially the form provided in this Subsection (4) for the circumstance
2035 provided in this Subsection (4).

2036 (b) A waiver and release may be in substantially the following form if the lien claimant
2037 is required to execute a waiver and release in exchange for or to induce the payment of a
2038 progress billing:

2039 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

2040 Property Name: _____

2041 Property Location: _____

2042 Undersigned's Customer: _____

2043 Invoice/Payment Application Number: _____

2044 Payment Amount: _____

2045 Payment Period: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications, or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____(Company Name)

By: _____

Its: _____"

(c) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a final billing:

"UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

2074 Property Location: _____

2075 Undersigned's Customer: _____

2076 Invoice/Payment Application Number: _____

2077 Payment Amount: _____

2078 To the extent provided below, this document becomes effective to release and the
2079 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
2080 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
2081 Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on
2082 the above described Property once:

2083 (1) the undersigned endorses a check in the above referenced Payment Amount payable
2084 to the undersigned; and

2085 (2) the check is paid by the depository institution on which it is drawn.

2086 This waiver and release applies to the final payment for the work, materials, equipment,
2087 or combination of work, materials, and equipment furnished by the undersigned to the Property
2088 or to the Undersigned's Customer.

2089 The undersigned warrants that the undersigned either has already paid or will use the
2090 money the undersigned receives from the final payment promptly to pay in full all the
2091 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
2092 equipment, or combination of work, materials, and equipment that are the subject of this
2093 waiver and release.

2094 Dated: _____

2095 _____(Company Name)

2096 _____By:_____

2097 _____Its:_____"

2098 (d) A restrictive endorsement placed on a check to effectuate a waiver and release
2099 described in this Subsection (4) meets the requirements of this section if it is in substantially
2100 the following form:

2101 "This check is a progress/ final payment for property described on this check sufficient

for identification. Endorsement of this check is an acknowledgment by the endorser that the waiver and release to which the payment applies is effective to the extent provided in Utah Code Ann. Subsection 38-1-39(4)(b) or (c) respectively."

(e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing the check shall indicate whether the check is for a progress payment or a final payment by circling the word "progress" if the check is for a progress payment, or the word "final" if the check is for a final payment.

(ii) If a restrictive endorsement does not indicate whether the check is for a progress payment or a final payment, it is considered to be for a progress payment.

(5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the enforcement of:

(i) an accord and satisfaction regarding a bona fide dispute; or

(ii) an agreement made in settlement of an action pending in any court or arbitration.

(b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or settlement:

(i) is in a writing signed by the lien claimant; and

(ii) specifically references the lien rights waived or impaired.

Section 45. Section **41-12a-803** is amended to read:

41-12a-803. Program creation -- Administration -- Selection of designated agent -- Duties -- Rulemaking -- Audits.

(1) There is created the Uninsured Motorist Identification Database Program to:

(a) establish an Uninsured Motorist Identification Database to verify compliance with motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other provisions under this part;

(b) assist in reducing the number of uninsured motor vehicles on the highways of the state;

(c) assist in increasing compliance with motor vehicle registration and sales and use tax

2130 laws;

2131 (d) assist in protecting a financial institution's bona fide security interest in a motor
2132 vehicle; and

2133 (e) assist in the identification and prevention of identity theft and other crimes.

2134 (2) The program shall be administered by the department with the assistance of the
2135 designated agent and the Motor Vehicle Division.

2136 (3) (a) The department shall contract in accordance with Title 63G, Chapter [6] 6a,
2137 Utah Procurement Code, with a third party to establish and maintain an Uninsured Motorist
2138 Identification Database for the purposes established under this part.

2139 (b) The contract may not obligate the department to pay the third party more money
2140 than is available in the account.

2141 (4) (a) The third party under contract under this section is the department's designated
2142 agent, and shall develop and maintain a computer database from the information provided by:

2143 (i) insurers under Section 31A-22-315;

2144 (ii) the division under Subsection (6); and

2145 (iii) the Motor Vehicle Division under Section 41-1a-120.

2146 (b) (i) The database shall be developed and maintained in accordance with guidelines
2147 established by the department so that state and local law enforcement agencies and financial
2148 institutions as defined in Section 7-1-103 can efficiently access the records of the database,
2149 including reports useful for the implementation of the provisions of this part.

2150 (ii) (A) The reports shall be in a form and contain information approved by the
2151 department.

2152 (B) The reports may be made available through the Internet or through other electronic
2153 medium, if the department determines that sufficient security is provided to ensure compliance
2154 with Section 41-12a-805 regarding limitations on disclosure of information in the database.

2155 (5) With information provided by the department and the Motor Vehicle Division, the
2156 designated agent shall, at least monthly for submissions under Subsection 31A-22-315(2)(b) or
2157 at least twice a month for submissions under Subsection 31A-22-315(2)(a):

2158 (a) update the database with the motor vehicle insurance information provided by the
2159 insurers in accordance with Section 31A-22-315; and

2160 (b) compare all current motor vehicle registrations against the database.

2161 (6) The division shall provide the designated agent with the name, date of birth,
2162 address, and driver license number of all persons on the driver license database.

2163 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2164 department shall make rules and develop procedures in cooperation with the Motor Vehicle
2165 Division to use the database for the purpose of administering and enforcing this part.

2166 (8) (a) The designated agent shall archive computer data files at least semi-annually for
2167 auditing purposes.

2168 (b) The internal audit unit of the tax commission provided under Section 59-1-206
2169 shall audit the program at least every three years.

2170 (c) The audit under Subsection (8)(b) shall include verification of:

2171 (i) billings made by the designated agent; and

2172 (ii) the accuracy of the designated agent's matching of vehicle registration with
2173 insurance data.

2174 Section 46. Section **53-2-404** is amended to read:

2175 **53-2-404. State costs for emergency disaster services.**

2176 (1) Subject to this section and Section 53-2-403, the division shall expend or commit to
2177 expend money described in Subsection 53-2-403(1)(d)(i) to fund costs to the state of
2178 emergency disaster services.

2179 (2) Money paid by the division under this section to government entities and private
2180 persons providing emergency disaster services are subject to Title 63G, Chapter [6] 6a, Utah
2181 Procurement Code.

2182 Section 47. Section **53A-1-706** is amended to read:

2183 **53A-1-706. Purchases of educational technology.**

2184 (1) (a) A school district or college of education shall comply with Title 63G, Chapter
2185 [6] 6a, Utah Procurement Code, in purchasing technology, except as otherwise provided in

2186 Subsection (1)(b).

2187 (b) A school district may purchase computers from, and contract for the repair or
2188 refurbishing of computers with, the Utah Correctional Industries without going through the
2189 bidding or competition procedures outlined in Title 63G, Chapter ~~[6, Part 4, Source Selections~~
2190 ~~and Contract Formation]~~ 6a, Utah Procurement Code.

2191 (2) A school district or college of education may purchase technology through
2192 cooperative purchasing contracts administered by the state Division of Purchasing or through
2193 its own established purchasing program.

2194 Section 48. Section **53A-1a-511** is amended to read:

2195 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
2196 **to charter schools.**

2197 (1) A charter school shall operate in accordance with its charter and is subject to Title
2198 53A, State System of Public Education, and other state laws applicable to public schools,
2199 except as otherwise provided in this part.

2200 (2) (a) A charter school or any other public school or school district may apply to the
2201 State Board of Education for a waiver of any state board rule that inhibits or hinders the school
2202 or the school district from accomplishing its mission or educational goals set out in its strategic
2203 plan or charter.

2204 (b) The state board may grant the waiver, unless:

2205 (i) the waiver would cause the school district or the school to be in violation of state or
2206 federal law; or

2207 (ii) the waiver would threaten the health, safety, or welfare of students in the district or
2208 at the school.

2209 (c) If the State Board of Education denies the waiver, the reason for the denial shall be
2210 provided in writing to the waiver applicant.

2211 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules
2212 governing the following do not apply to a charter school:

2213 (i) school libraries;

2214 (ii) required school administrative and supervisory services; and
2215 (iii) required expenditures for instructional supplies.

2216 (b) A charter school shall comply with rules implementing statutes that prescribe how
2217 state appropriations may be spent.

2218 (4) The following provisions of Title 53A, State System of Public Education, and rules
2219 adopted under those provisions, do not apply to a charter school:

2220 (a) Sections 53A-1a-108 and 53A-1a-108.5, requiring the establishment of a school
2221 community council and school improvement plan;

2222 (b) Sections 53A-3-413 and 53A-3-414, pertaining to the use of school buildings as
2223 civic centers;

2224 (c) Section 53A-3-420, requiring the use of activity disclosure statements;

2225 (d) Section 53A-12-207, requiring notification of intent to dispose of textbooks;

2226 (e) Section 53A-13-107, requiring annual presentations on adoption;

2227 (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school
2228 districts and local school boards; and

2229 (g) Section 53A-14-107, requiring an independent evaluation of instructional materials.

2230 (5) For the purposes of Title 63G, Chapter ~~6~~ 6a, Utah Procurement Code, a charter
2231 school shall be considered a local public procurement unit.

2232 (6) Each charter school shall be subject to:

2233 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

2234 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

2235 (7) (a) The State Charter School Board shall, in concert with the charter schools, study
2236 existing state law and administrative rules for the purpose of determining from which laws and
2237 rules charter schools should be exempt.

2238 (b) (i) The State Charter School Board shall present recommendations for exemption to
2239 the State Board of Education for consideration.

2240 (ii) The State Board of Education shall consider the recommendations of the State
2241 Charter School Board and respond within 60 days.

2242 Section 49. Section **53A-20-101** is amended to read:

2243 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
2244 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
2245 **school boards -- Interest of local school board members.**

2246 (1) As used in this section, the word "sealed" does not preclude acceptance of
2247 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
2248 sealed and submitted.

2249 (2) (a) Prior to the construction of any school or the alteration of any existing school
2250 plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school
2251 board shall advertise for bids on the project at least 10 days before the bid due date.

2252 (b) The board shall have the advertisement published in a newspaper having general
2253 circulation throughout the state and in appropriate construction trade publications that offer
2254 free listings.

2255 (c) A similar advertisement is required in a newspaper published or having general
2256 circulation in any city or county that would be affected by the proposed project.

2257 (d) The advertisement shall:

2258 (i) require sealed proposals for the building project in accordance with plans and
2259 specifications furnished by the local school board;

2260 (ii) state where and when the proposals will be opened and shall reserve the right of the
2261 board to reject any and all proposals; and

2262 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany
2263 the bid.

2264 (3) (a) The board shall meet at the time and place specified in the advertisement and
2265 publicly open and read all received proposals.

2266 (b) If satisfactory bids are received, the board shall award the contract to the lowest
2267 responsible bidder.

2268 (c) If none of the proposals are satisfactory, all shall be rejected.

2269 (d) The board shall again advertise in the manner provided in this section.

2270 (e) If, after advertising a second time no satisfactory bid is received, the board may
2271 proceed under its own direction with the required project.

2272 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of
2273 the local school board.

2274 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
2275 additional bonds required under this section, then the bidder's check or bond is forfeited to the
2276 district.

2277 (5) A local school board shall require payment and performance bonds of the
2278 successful bidder as required in Section ~~[63G-6-505]~~ 63G-6a-1103.

2279 (6) (a) A local school board may require in the proposed contract that at least 10% of
2280 the contract price be withheld until the project is completed and accepted by the board.

2281 (b) If money is withheld, the board shall place it in an interest bearing account, and the
2282 interest accrues for the benefit of the contractor and subcontractors.

2283 (c) This money shall be paid upon completion of the project and acceptance by the
2284 board.

2285 (7) (a) A local school board may not bid on projects within the district if the total
2286 accumulative estimated cost exceeds \$80,000.

2287 (b) The board may use its resources if no satisfactory bids are received under this
2288 section.

2289 (8) If the local school board determines in accordance with Section ~~[63G-6-501]~~
2290 63G-6a-1302 to use a construction manager/general contractor as its method of construction
2291 contracting management on projects where the total estimated accumulative cost exceeds
2292 \$80,000, it shall select the construction manager/general contractor ~~[using one of the source~~
2293 ~~selection methods provided for in Sections 63G-6-401 through 63G-6-501]~~ in accordance with
2294 the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

2295 (9) A local school board member may not have a direct or indirect financial interest in
2296 the construction project contract.

2297 Section 50. Section **53A-25b-105** is amended to read:

2298 **53A-25b-105. Applicability of statutes to the Utah Schools for the Deaf and the**
2299 **Blind.**

2300 (1) The Utah Schools for the Deaf and the Blind is subject to Title 53A, State System
2301 of Public Education, and other state laws applicable to public schools, except as otherwise
2302 provided by this chapter.

2303 (2) The following provisions of Title 53A, State System of Public Education, do not
2304 apply to the Utah Schools for the Deaf and the Blind:

2305 (a) provisions governing the budgets, funding, or finances of school districts or charter
2306 schools; and

2307 (b) provisions governing school construction.

2308 (3) Except as provided in this chapter, the Utah Schools for the Deaf and the Blind is
2309 subject to state laws governing state agencies, including:

2310 (a) Title 51, Chapter 5, Funds Consolidation Act;

2311 (b) Title 51, Chapter 7, State Money Management Act;

2312 (c) Title 52, Chapter 4, Open and Public Meetings Act;

2313 (d) Title 63A, Utah Administrative Services Code;

2314 (e) Title 63G, Chapter 2, Government Records Access and Management Act;

2315 (f) Title 63G, Chapter 4, Administrative Procedures Act;

2316 (g) Title 63G, Chapter [6] 6a, Utah Procurement Code;

2317 (h) Title 63J, Chapter 1, Budgetary Procedures Act;

2318 (i) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

2319 (j) Title 67, Chapter 19, Utah State Personnel Management Act.

2320 Section 51. Section **53C-1-201 (Effective 07/01/12)** is amended to read:

2321 **53C-1-201 (Effective 07/01/12). Creation of administration -- Purpose -- Director.**

2322 (1) (a) There is established within state government the School and Institutional Trust
2323 Lands Administration.

2324 (b) The administration shall manage all school and institutional trust lands and assets
2325 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation

2326 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

2327 (2) The administration is an independent state agency and not a division of any other
2328 department.

2329 (3) (a) It is subject to the usual legislative and executive department controls except as
2330 provided in this Subsection (3).

2331 (b) (i) The director may make rules as approved by the board that allow the
2332 administration to classify a business proposal submitted to the administration as protected
2333 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

2334 (ii) The administration shall return the proposal to the party who submitted the
2335 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access
2336 and Management Act, if the administration determines not to proceed with the proposal.

2337 (iii) The administration shall classify the proposal pursuant to law if it decides to
2338 proceed with the proposal.

2339 (iv) Section 63G-2-403 does not apply during the review period.

2340 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
2341 Administrative Rulemaking Act, except that the administration is not subject to Subsections
2342 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
2343 establish a procedure for the expedited approval of rules, based on written findings by the
2344 director showing:

2345 (i) the changes in business opportunities affecting the assets of the trust;

2346 (ii) the specific business opportunity arising out of those changes which may be lost
2347 without the rule or changes to the rule;

2348 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
2349 causing the loss of the specific opportunity;

2350 (iv) approval by at least five board members; and

2351 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
2352 reasons and justifications for its findings, with the Division of Administrative Rules and
2353 notified interested parties as provided in Subsection 63G-3-301(10).

2354 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
2355 Management Act, except as provided in this Subsection (3)(d).

2356 (ii) The board may approve, upon recommendation of the director, that exemption for
2357 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
2358 the administration to efficiently fulfill its responsibilities under the law. The director shall
2359 consult with the executive director of the Department of Human Resource Management prior
2360 to making such a recommendation.

2361 (iii) The positions of director, deputy director, associate director, assistant director,
2362 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
2363 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

2364 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
2365 after consultation with the executive director of the Department of Human Resource
2366 Management, within ranges approved by the board. The board and director shall consider
2367 salaries for similar positions in private enterprise and other public employment when setting
2368 salary ranges.

2369 (v) The board may create an annual incentive and bonus plan for the director and other
2370 administration employees designated by the board, based upon the attainment of financial
2371 performance goals and other measurable criteria defined and budgeted in advance by the board.

2372 (e) The administration shall comply with Title 63G, Chapter [6] 6a, Utah Procurement
2373 Code, except where the board approves, upon recommendation of the director, exemption from
2374 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
2375 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
2376 efficiently fulfill its responsibilities under the law.

2377 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
2378 the fee agency requirements of Section 63J-1-504.

2379 (ii) The following fees of the administration are subject to the requirements of Section
2380 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
2381 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral

2382 assignment, electronic payment, and processing.

2383 (4) The administration is managed by a director of school and institutional trust lands
2384 appointed by a majority vote of the board of trustees with the consent of the governor.

2385 (5) (a) The board of trustees shall provide policies for the management of the
2386 administration and for the management of trust lands and assets.

2387 (b) The board shall provide policies for the ownership and control of Native American
2388 remains that are discovered or excavated on school and institutional trust lands in consultation
2389 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
2390 Native American Grave Protection and Repatriation Act. The director may make rules in
2391 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
2392 policies provided by the board regarding Native American remains.

2393 (6) In connection with joint ventures and other transactions involving trust lands and
2394 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
2395 approval, may become a member of a limited liability company under Title 48, Chapter 3, Utah
2396 Revised Uniform Limited Liability Company Act, and is considered a person under Section
2397 48-3-102.

2398 Section 52. Section **54-3-29** is amended to read:

2399 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**
2400 **construction or reconstruction -- Notice -- Cooperation.**

2401 (1) As used in this section:

2402 (a) "Design-build" means a design-build transportation project for which a design-build
2403 transportation project contract is issued, within the meaning of Section [~~63G-6-502~~]

2404 63G-6a-1402.

2405 (b) "Municipality" is as defined in Section 10-1-104.

2406 (c) "Political subdivision" means a:

2407 (i) county; or

2408 (ii) municipality.

2409 (d) "Public agency" means an entity of state government or a political subdivision.

2410 (e) "Public highway" means a highway, street, road, or alley constructed for public use
2411 in the state.

2412 (f) "Utility company" means a privately, cooperatively, or publicly owned utility,
2413 including a utility owned by a political subdivision, that provides service using a utility facility.

2414 (g) "Utility facility" means:

2415 (i) a telecommunications, gas, electricity, cable television, water, sewer, or data
2416 facility;

2417 (ii) a video transmission line;

2418 (iii) a drainage and irrigation system; or

2419 (iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on,
2420 along, across, over, through, or under any public highway.

2421 (2) If a public agency engages in or proposes to engage in a construction or
2422 reconstruction project on a public highway that may require the removal, relocation, or
2423 alteration of a utility facility, the public agency shall:

2424 (a) contact an association, established under Title 54, Chapter 8a, Damage to
2425 Underground Utility Facilities, to identify each utility company that may have a utility facility
2426 in the area of the construction or reconstruction project;

2427 (b) identify a utility company that has an above-ground utility facility in the area of the
2428 proposed construction or reconstruction project; and

2429 (c) electronically notify each utility company identified in accordance with Subsections
2430 (2)(a) and (b).

2431 (3) The notice required by Subsection (2)(c) shall:

2432 (a) be made as early as practicable and at least 30 days:

2433 (i) before the preliminary design or project development meeting;

2434 (ii) before issuance of a request for proposal for a design-build project; or

2435 (iii) after a change in scope of a design-build project;

2436 (b) include:

2437 (i) information concerning the proposed project design;

2438 (ii) the proposed date of a required removal, relocation, or alteration of a utility facility;
2439 (iii) the federal identifying project number, if applicable; and

2440 (c) advise the utility company if the proposed project may qualify for aid for the utility
2441 company's expense in removing, relocating, or altering a utility facility.

2442 (4) A public agency shall permit a utility company notified under Subsection (2) to
2443 participate in the preliminary design or project development meeting, or similar meeting at
2444 which the project design is addressed.

2445 (5) (a) A public agency shall, not less than 30 days after providing notice under
2446 Subsection (2) to each utility company, provide the utility company an opportunity to meet
2447 with the public agency to allow the utility company to:

2448 (i) review project plans;

2449 (ii) understand the objectives and funding sources for the proposed project;

2450 (iii) provide and discuss recommendations to the public agency that may reasonably
2451 eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of
2452 utility company services, or eliminate or reduce the need for present or future utility facility
2453 removal, relocation, or alteration; and

2454 (iv) provide reasonable schedules to enable coordination of the construction project
2455 and removal, relocation, or alteration of a utility facility.

2456 (b) If a public agency provides a utility company with reasonable opportunities to meet
2457 in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the
2458 public agency's ability to proceed with the project.

2459 (6) While recognizing the essential goals and objectives of the public highway agency
2460 in proceeding with and completing a project, the parties shall use their best efforts to find ways
2461 to:

2462 (a) eliminate the cost to the utility of relocation of the utility facilities; or

2463 (b) if elimination of the costs is not feasible, minimize the relocation costs to the extent
2464 reasonably possible.

2465 (7) A utility company notified under Subsection (2) shall coordinate with the public

2466 agency concerning the utility facility removal, relocation, or alteration, including the
2467 scheduling of the utility facility removal, relocation, or alteration.

2468 (8) A public agency and a utility company may address the removal, relocation, or
2469 alteration of a utility facility in relation to a construction or reconstruction project on a public
2470 highway in a franchise agreement in lieu of this section, if the public agency is otherwise
2471 permitted to enter into the franchise agreement.

2472 (9) This chapter does not affect a public agency's authority over a public right-of-way,
2473 including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or
2474 other valid provision governing the use of the public right-of-way.

2475 Section 53. Section **54-8b-10** is amended to read:

2476 **54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons**
2477 **with telecommunication devices -- Definitions -- Procedures for establishing program --**
2478 **Surcharge -- Administration and disposition of surcharge money.**

2479 (1) As used in this section:

2480 (a) "Certified deaf or severely hearing or speech impaired person" means any state
2481 resident who:

2482 (i) is so certified by:

2483 (A) a licensed physician;

2484 (B) an otolaryngologist;

2485 (C) a speech language pathologist;

2486 (D) an audiologist; or

2487 (E) a qualified state agency; and

2488 (ii) qualifies for assistance under any low income public assistance program
2489 administered by a state agency.

2490 (b) "Certified interpreter" means a person who is a certified interpreter under Title
2491 53A, Chapter 26a, Interpreter Services for the Hearing Impaired Act.

2492 (c) (i) "Telecommunication device" means any mechanical adaptation device that
2493 enables a deaf or severely hearing or speech impaired person to use the telephone.

2494 (ii) "Telecommunication device" includes:

2495 (A) telecommunication devices for the deaf (TDD);

2496 (B) telephone amplifiers;

2497 (C) telephone signal devices;

2498 (D) artificial larynxes; and

2499 (E) adaptive equipment for TDD keyboard access.

2500 (2) The commission shall hold hearings to establish a program whereby a certified deaf
2501 or severely hearing or speech impaired customer of a telecommunications corporation that
2502 provides service through a local exchange or of a wireless telecommunications provider may
2503 obtain a telecommunication device capable of serving the customer at no charge to the
2504 customer beyond the rate for basic service.

2505 (3) (a) The program described in Subsection (2) shall provide a dual party relay system
2506 using third party intervention to connect a certified deaf or severely hearing or speech impaired
2507 person with a normal hearing person by way of telecommunication devices designed for that
2508 purpose.

2509 (b) The commission may, by rule, establish the type of telecommunications device to
2510 be provided to ensure functional equivalence.

2511 (4) (a) The commission shall impose a surcharge on each residential and business
2512 access line of each customer of local-exchange telephone service in this state, and each
2513 residential and business telephone number of each customer of mobile telephone service in this
2514 state, not including a telephone number used exclusively to transfer data to and from a mobile
2515 device, which shall be collected by the telecommunications corporation providing public
2516 telecommunications service to the customer, to cover the costs of:

2517 (i) the program described in Subsection (2); and

2518 (ii) payments made under Subsection (5).

2519 (b) The commission shall establish by rule the amount to be charged under this section,
2520 provided that:

2521 (i) the surcharge does not exceed 20 cents per month for each residential and business

2522 access line for local-exchange telephone service, and for each residential and business
2523 telephone number for mobile telephone service, not including a telephone number used
2524 exclusively to transfer data to and from a mobile device; and

2525 (ii) if the surcharge is related to a mobile telecommunications service, the surcharge
2526 may be imposed, billed, and collected only to the extent permitted by the Mobile
2527 Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

2528 (c) The telecommunications corporation shall collect the surcharge from its customers
2529 and transfer the money collected to the commission under rules adopted by the commission.

2530 (d) The surcharge shall be separately identified on each bill to a customer.

2531 (5) (a) Money collected from the surcharge imposed under Subsection (4) shall be
2532 deposited in the state treasury as dedicated credits to be administered as determined by the
2533 commission.

2534 (b) These dedicated credits may be used only:

2535 (i) for the purchase, maintenance, repair, and distribution of telecommunication
2536 devices;

2537 (ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

2538 (iii) to reimburse telephone corporations for the expenses incurred in collecting and
2539 transferring to the commission the surcharge imposed by the commission;

2540 (iv) for the general administration of the program;

2541 (v) to train persons in the use of telecommunications devices; and

2542 (vi) by the commission to contract, in compliance with Title 63G, Chapter [6] 6a, Utah
2543 Procurement Code, with:

2544 (A) an institution within the state system of higher education listed in Section
2545 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as
2546 certified interpreters; or

2547 (B) the Division of Services to the Deaf and Hard of Hearing for a program that trains
2548 persons to qualify as certified interpreters.

2549 (c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah

2550 Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

2551 (ii) In the initial rulemaking to determine the administration of money under
2552 Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

2553 (d) Money received by the commission under Subsection (4) is nonlapsing.

2554 (6) (a) The telephone surcharge need not be collected by a telecommunications
2555 corporation if the amount collected would be less than the actual administrative costs of the
2556 collection.

2557 (b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the
2558 commission, in lieu of the revenue from the surcharge collection, a breakdown of the
2559 anticipated costs and the expected revenue from the collection, showing that the costs exceed
2560 the revenue.

2561 (7) The commission shall solicit the advice, counsel, and physical assistance of
2562 severely hearing or speech impaired persons and the organizations serving them in the design
2563 and implementation of the program.

2564 Section 54. Section **62A-1-108.5** is amended to read:

2565 **62A-1-108.5. Mental illness and intellectual disability examinations --**
2566 **Responsibilities of the department.**

2567 (1) In accomplishing its duties to conduct mental illness and intellectual disability
2568 examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed
2569 as outlined in this section and within appropriations authorized by the Legislature. The
2570 executive director may delegate the executive director's responsibilities under this section to
2571 one or more divisions within the department.

2572 (2) When the department is ordered by the court to conduct a mental illness or
2573 intellectual disability examination, the executive director shall:

2574 (a) direct that the examination be performed at the Utah State Hospital; or

2575 (b) designate at least one examiner, selected under Subsection (3), to examine the
2576 defendant in the defendant's current custody or status.

2577 (3) The department shall establish criteria, in consultation with the Commission on

2578 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
2579 mental illness and intellectual disability examinations under Subsection (2)(b). In making this
2580 selection, the department shall follow the provisions of Title 63G, Chapter [6] 6a, Utah
2581 Procurement Code.

2582 (4) Nothing in this section prohibits the executive director, at the request of defense
2583 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of
2584 Criminal Procedure, and for good cause shown, from proposing a person who has not been
2585 previously selected under Subsection (3) to contract with the department to conduct the
2586 examination. In selecting that person, the criteria of the department established under
2587 Subsection (3) and the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, shall
2588 be met.

2589 Section 55. Section **62A-3-104** is amended to read:

2590 **62A-3-104. Authority of division.**

2591 (1) The division is the sole state agency, as defined by the Older Americans Act of
2592 1965, 42 U.S.C. 3001 et seq., to:

2593 (a) serve as an effective and visible advocate for the aging and adult population of this
2594 state;

2595 (b) develop and administer a state plan under the policy direction of the board; and

2596 (c) take primary responsibility for state activities relating to provisions of the Older
2597 Americans Act of 1965, as amended.

2598 (2) (a) The division has authority to designate:

2599 (i) planning and service areas for the state; and

2600 (ii) an area agency on aging within each planning and service area to design and
2601 implement a comprehensive and coordinated system of services and programs for the aged
2602 within appropriations from the Legislature.

2603 (b) Designation as an area agency on aging may be withdrawn:

2604 (i) upon request of the area agency on aging; or

2605 (ii) upon noncompliance with the provisions of the:

- 2606 (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
- 2607 (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C.
- 2608 3001 et seq.;
- 2609 (C) provisions of this chapter; or
- 2610 (D) rules, policies, or procedures established by the division.
- 2611 (3) (a) The division has the authority to designate:
- 2612 (i) planning and service areas for the state; and
- 2613 (ii) subject to Subsection (3)(b), an area agency on high risk adults within each
- 2614 planning and service area to design and implement a comprehensive and coordinated system of
- 2615 case management and programs for high risk adults within appropriations from the Legislature.
- 2616 (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall
- 2617 designate as the area agency on high risk adults in a planning and service area:
- 2618 (i) the area agency on aging that operates within the same geographic area if that
- 2619 agency requests, before July 1, 1998, to expand that agency's current contract with the division
- 2620 to include the responsibility of:
- 2621 (A) being the area agency on high risk adults; or
- 2622 (B) operating the area agency on high risk adults:
- 2623 (I) through joint cooperation with one or more existing area agencies on aging; and
- 2624 (II) without reducing geographical coverage in any service area; or
- 2625 (ii) a public or private nonprofit agency or office if the area agency on aging that
- 2626 operates within the same geographic area has not made a request in accordance with Subsection
- 2627 (3)(b)(i).
- 2628 (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
- 2629 (ii) The division's efforts to establish area agencies on high risk adults shall start with
- 2630 counties with a population of more than 150,000 people.
- 2631 (d) Designation as an area agency on high risk adults may be withdrawn:
- 2632 (i) upon request by the area agency; or
- 2633 (ii) upon noncompliance with:

- 2634 (A) state law;
- 2635 (B) federal law; or
- 2636 (C) rules, policies, or procedures established by the division.
- 2637 (4) (a) The division may, by following the procedures and requirements of Title 63J,
- 2638 Chapter 5, Federal Funds Procedures:
- 2639 (i) seek federal grants, loans, or participation in federal programs; and
- 2640 (ii) receive and distribute state and federal funds for the division's programs and
- 2641 services to the aging and adult populations of the state.
- 2642 (b) The division may not disburse public funds to a personal care attendant as payment
- 2643 for personal services rendered to an aged person or high risk adult, except as provided in
- 2644 Section 62A-3-104.3.
- 2645 (5) The division has authority to establish, either directly or by contract, programs of
- 2646 advocacy, monitoring, evaluation, technical assistance, and public education to enhance the
- 2647 quality of life for aging and adult citizens of the state.
- 2648 (6) In accordance with the rules of the division and Title 63G, Chapter [6] 6a, Utah
- 2649 Procurement Code, the division may contract with:
- 2650 (a) the governing body of an area agency to provide a comprehensive program of
- 2651 services; or
- 2652 (b) public and private entities for special services.
- 2653 (7) The division has authority to provide for collection, compilation, and dissemination
- 2654 of information, statistics, and reports relating to issues facing aging and adult citizens.
- 2655 (8) The division has authority to prepare and submit reports regarding the operation
- 2656 and administration of the division to the department, the Legislature, and the governor, as
- 2657 requested.
- 2658 (9) The division shall:
- 2659 (a) implement and enforce policies established by the board governing all aspects of
- 2660 the division's programs for aging and adult persons in the state;
- 2661 (b) in order to ensure compliance with all applicable state and federal statutes, policies,

2662 and procedures, monitor and evaluate programs provided by or under contract with:

2663 (i) the division;

2664 (ii) area agencies; and

2665 (iii) an entity that receives funds from an area agency;

2666 (c) examine expenditures of public funds;

2667 (d) withhold funds from programs based on contract noncompliance;

2668 (e) review and approve plans of area agencies in order to ensure:

2669 (i) compliance with division policies; and

2670 (ii) a statewide comprehensive program;

2671 (f) in order to further programs for aging and adult persons and prevent duplication of

2672 services, promote and establish cooperative relationships with:

2673 (i) state and federal agencies;

2674 (ii) social and health agencies;

2675 (iii) education and research organizations; and

2676 (iv) other related groups;

2677 (g) advocate for the aging and adult populations;

2678 (h) promote and conduct research on the problems and needs of aging and adult

2679 persons;

2680 (i) submit recommendations for changes in policies, programs, and funding to the:

2681 (i) governor; and

2682 (ii) Legislature; and

2683 (j) (i) accept contributions to and administer the funds contained in the "Out and

2684 About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and

2685 (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

2686 Rulemaking Act, to facilitate the administration of the "Out and About" Homebound

2687 Transportation Assistance Fund in accordance with Section 62A-3-110.

2688 Section 56. Section **62A-3-104.1** is amended to read:

2689 **62A-3-104.1. Powers and duties of area agencies.**

- 2690 (1) An area agency that provides services to an aged person, or a high risk adult shall
2691 within the area agency's respective jurisdiction:
- 2692 (a) advocate by monitoring, evaluating, and providing input on all policies, programs,
2693 hearings, and levies that affect a person described in this Subsection (1);
- 2694 (b) design and implement a comprehensive and coordinated system of services within a
2695 designated planning and service area;
- 2696 (c) conduct periodic reviews and evaluations of needs and services;
- 2697 (d) prepare and submit to the division plans for funding and service delivery for
2698 services within the designated planning and service area;
- 2699 (e) establish, either directly or by contract, programs licensed under Chapter 2,
2700 Licensure of Programs and Facilities;
- 2701 (f) (i) appoint an area director;
- 2702 (ii) prescribe the area director's duties; and
- 2703 (iii) provide adequate and qualified staff to carry out the area plan described in
2704 Subsection (1)(d);
- 2705 (g) establish rules not contrary to policies of the board and rules of the division,
2706 regulating local services and facilities;
- 2707 (h) operate other services and programs funded by sources other than those
2708 administered by the division;
- 2709 (i) establish mechanisms to provide direct citizen input, including an area agency
2710 advisory council with a majority of members who are eligible for services from the area
2711 agency;
- 2712 (j) establish fee schedules; and
- 2713 (k) comply with the requirements and procedures of:
- 2714 (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
- 2715 (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
2716 Organizations, and Other Local Entities Act.
- 2717 (2) Before disbursing any public funds, an area agency shall require that all entities

2718 receiving any public funds agree in writing that:

2719 (a) the division may examine the entity's program and financial records; and

2720 (b) the auditor of the local area agency may examine and audit the entity's program and
2721 financial records, if requested by the local area agency.

2722 (3) An area agency on aging may not disburse public funds to a personal care attendant
2723 as payment for personal services rendered to an aged person or high risk adult, except as
2724 provided in Section 62A-3-104.3.

2725 (4) (a) For the purpose of providing services pursuant to this part, a local area agency
2726 may receive:

2727 (i) property;

2728 (ii) grants;

2729 (iii) gifts;

2730 (iv) supplies;

2731 (v) materials;

2732 (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v);

2733 and

2734 (vii) contributions.

2735 (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift
2736 shall be used for the specific service or program.

2737 (5) (a) Area agencies shall award all public funds in compliance with:

2738 (i) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or

2739 (ii) a county procurement ordinance that requires procurement procedures similar to
2740 those described in Subsection (5)(a)(i).

2741 (b) (i) If all initial bids on a project are rejected, the area agency shall publish a new
2742 invitation to bid.

2743 (ii) If no satisfactory bid is received by the area agency described in Subsection
2744 (5)(b)(i), when the bids received from the second invitation are opened the area agency may
2745 execute a contract without requiring competitive bidding.

2746 (c) (i) An area agency need not comply with the procurement provisions of this section
2747 when it disburses public funds to another governmental entity.

2748 (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political
2749 subdivision or institution of higher education of the state.

2750 (d) (i) Contracts awarded by an area agency shall be for a:

2751 (A) fixed amount; and

2752 (B) limited period.

2753 (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in
2754 available funding for the same contract purpose without competition.

2755 (6) Local area agencies shall comply with:

2756 (a) applicable state and federal:

2757 (i) statutes;

2758 (ii) policies; and

2759 (iii) audit requirements; and

2760 (b) directives resulting from an audit described in Subsection (6)(a)(iii).

2761 Section 57. Section **62A-14-109** is amended to read:

2762 **62A-14-109. Contract for services.**

2763 (1) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the office
2764 may contract with one or more providers to perform guardian and conservator duties.

2765 (2) The office shall review and monitor the services provided by a contract provider to
2766 a ward for whom the office has been appointed guardian or conservator.

2767 Section 58. Section **63A-5-205** is amended to read:

2768 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
2769 **coverage.**

2770 (1) As used in this section:

2771 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

2772 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

2773 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section

2774 34A-2-104 who:

2775 (i) works at least 30 hours per calendar week; and

2776 (ii) meets employer eligibility waiting requirements for health care insurance which
2777 may not exceed the first day of the calendar month following 90 days from the date of hire.

2778 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

2779 (e) "Qualified health insurance coverage" is as defined in Section 26-40-115.

2780 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

2781 (2) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the director
2782 may:

2783 (a) subject to Subsection (3), enter into contracts for any work or professional services
2784 which the division or the State Building Board may do or have done; and

2785 (b) as a condition of any contract for architectural or engineering services, prohibit the
2786 architect or engineer from retaining a sales or agent engineer for the necessary design work.

2787 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design
2788 or construction contracts entered into by the division or the State Building Board on or after
2789 July 1, 2009, and:

2790 (i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or
2791 greater; and

2792 (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

2793 (b) This Subsection (3) does not apply:

2794 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

2795 (ii) if the contract is a sole source contract;

2796 (iii) if the contract is an emergency procurement; or

2797 (iv) to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification
2798 to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

2799 (c) A person who intentionally uses change orders or contract modifications to
2800 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

2801 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that

the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

(C) a public transit district in accordance with Section 17B-2a-818.5;

(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(E) the Department of Transportation in accordance with Section 72-6-107.5; and

(F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

2830 (I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i)
2831 or (ii) more than twice in any 12-month period; and

2832 (II) that the actuarially equivalent determination required for the qualified health
2833 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
2834 department or division with a written statement of actuarial equivalency from either:

2835 (Aa) the Utah Insurance Department;

2836 (Bb) an actuary selected by the contractor or the contractor's insurer; or

2837 (Cc) an underwriter who is responsible for developing the employer group's premium
2838 rates;

2839 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
2840 violates the provisions of this Subsection (3), which may include:

2841 (I) a three-month suspension of the contractor or subcontractor from entering into
2842 future contracts with the state upon the first violation;

2843 (II) a six-month suspension of the contractor or subcontractor from entering into future
2844 contracts with the state upon the second violation;

2845 (III) an action for debarment of the contractor or subcontractor in accordance with
2846 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

2847 (IV) monetary penalties which may not exceed 50% of the amount necessary to
2848 purchase qualified health insurance coverage for an employee and the dependents of an
2849 employee of the contractor or subcontractor who was not offered qualified health insurance
2850 coverage during the duration of the contract; and

2851 (C) a website on which the department shall post the benchmark for the qualified
2852 health insurance coverage identified in Subsection (1)(e).

2853 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
2854 subcontractor who intentionally violates the provisions of this section shall be liable to the
2855 employee for health care costs that would have been covered by qualified health insurance
2856 coverage.

2857 (ii) An employer has an affirmative defense to a cause of action under Subsection

2858 (3)(g)(i) if:
2859 (A) the employer relied in good faith on a written statement of actuarial equivalency
2860 provided by:
2861 (I) an actuary; or
2862 (II) an underwriter who is responsible for developing the employer group's premium
2863 rates; or
2864 (B) the department determines that compliance with this section is not required under
2865 the provisions of Subsection (3)(b).
2866 (iii) An employee has a private right of action only against the employee's employer to
2867 enforce the provisions of this Subsection (3)(g).
2868 (h) Any penalties imposed and collected under this section shall be deposited into the
2869 Medicaid Restricted Account created by Section 26-18-402.
2870 (i) The failure of a contractor or subcontractor to provide qualified health insurance
2871 coverage as required by this section:
2872 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
2873 or contractor under Section ~~[63G-6-801]~~ 63G-6a-1603 or any other provision in Title 63G,
2874 Chapter ~~[6, Part 8, Legal and Contractual Remedies]~~ 6a, Utah Procurement Code; and
2875 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
2876 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2877 or construction.
2878 (4) The judgment of the director as to the responsibility and qualifications of a bidder
2879 is conclusive, except in case of fraud or bad faith.
2880 (5) The division shall make all payments to the contractor for completed work in
2881 accordance with the contract and pay the interest specified in the contract on any payments that
2882 are late.
2883 (6) If any payment on a contract with a private contractor to do work for the division or
2884 the State Building Board is retained or withheld, it shall be retained or withheld and released as
2885 provided in Section 13-8-5.

2886 Section 59. Section **63A-5-208** is amended to read:

2887 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**
2888 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**
2889 **Penalties.**

2890 (1) As used in this section:

2891 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
2892 prime contractor.

2893 (b) "Subcontractor" means any person or entity under contract with a contractor or
2894 another subcontractor to provide services or labor for the construction, installation, or repair of
2895 an improvement to real property.

2896 (c) "Subcontractor" includes a trade contractor or specialty contractor.

2897 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,
2898 or supplies to a contractor or subcontractor.

2899 (2) The director shall apply the provisions of this section to achieve fair and
2900 competitive bidding and to discourage bid-shopping by contractors.

2901 (3) (a) (i) (A) On each public construction project, the director shall require the
2902 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each
2903 subcontractor's name, bid amount, and other information required by rule.

2904 (B) Other bidders who are not one of the apparent lowest three bidders may also
2905 submit a list of their first-tier subcontractors containing the information required by this
2906 Subsection (3).

2907 (C) The director may not consider any bid submitted by a bidder if the bidder fails to
2908 submit a subcontractor list meeting the requirements of this section.

2909 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors
2910 whose bid is less than \$20,000 need not be listed.

2911 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors
2912 whose bid is less than \$35,000 need not be listed.

2913 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not

2914 including Saturdays, Sundays, and state holidays.

2915 (ii) This list does not limit the director's right to authorize a change in the listing of any
2916 subcontractor.

2917 (c) The bidders shall verify that all subcontractors listed as part of their bids are
2918 licensed as required by state law.

2919 (d) Twenty-four hours after the bid opening, the contractor may change the contractor's
2920 subcontractors only after:

2921 (i) receiving permission from the director; and

2922 (ii) establishing that:

2923 (A) the change is in the best interest of the state; and

2924 (B) the contractor establishes reasons for the change that meet the standards established
2925 by the State Building Board.

2926 (e) If the director approves any changes in subcontractors that result in a net lower
2927 contract price for subcontracted work, the total of the prime contract may be reduced to reflect
2928 the changes.

2929 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently
2930 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor
2931 and:

2932 (i) the bidder intends to perform the work of a subcontractor himself; or

2933 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date
2934 because the bidder was unable to:

2935 (A) obtain a bid from a qualified subcontractor; or

2936 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be
2937 reasonable.

2938 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the
2939 director may, by written request, require that the bidder provide the director with information
2940 indicating the bidder's:

2941 (A) previous experience in the type of work to be performed; and

- 2942 (B) qualifications for performing the work.
- 2943 (ii) The bidder must respond in writing within five business days of receiving the
- 2944 director's written request.
- 2945 (iii) If the bidder's submitted information causes the director to reasonably believe that
- 2946 self-performance of the portion of the work by the bidder is likely to yield a substandard
- 2947 finished product, the director shall:
- 2948 (A) require the bidder to use a subcontractor for the portion of the work in question and
- 2949 obtain the subcontractor bid under the supervision of the director; or
- 2950 (B) reject the bidder's bid.
- 2951 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later
- 2952 date, the bidder shall provide documentation with the subcontractor list describing:
- 2953 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;
- 2954 and
- 2955 (B) why the bidder was unable to obtain a qualified subcontractor bid.
- 2956 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later
- 2957 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified
- 2958 subcontractor bid.
- 2959 (iii) The director may not adjust the amount of the contract awarded in order to reflect
- 2960 the actual amount of the subcontractor's bid.
- 2961 (5) The division may not disclose any subcontractor bid amounts obtained under this
- 2962 section until the division has awarded the project to a contractor.
- 2963 (6) (a) The director shall, in consultation with the State Building Board, prepare draft
- 2964 rules establishing a process for resolving disputes involved with contracts under the division's
- 2965 procurement authority.
- 2966 (b) The draft rules shall be presented to the Government Operations Interim Committee
- 2967 for review, comment, and recommendations before August 31, 2004.
- 2968 (c) The director shall consider, and the rules may include:
- 2969 (i) requirements regarding preliminary resolution efforts between the parties directly

2970 involved with the dispute;

2971 (ii) requirements for the filing of claims, including notification, timeframes, and

2972 documentation;

2973 (iii) identification of the types of costs eligible for allocation and a method for

2974 allocating costs among the parties to the dispute;

2975 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

2976 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time

2977 period for resolution of the claim by not to exceed 60 additional days for good cause;

2978 (vi) provision for the extension of required time periods if the claimant agrees;

2979 (vii) requirements that decisions be issued in writing;

2980 (viii) provisions for administrative appeals of the decision;

2981 (ix) provisions for the timely payment of claims after resolution of the dispute,

2982 including any appeals;

2983 (x) a requirement that the final determination resulting from the dispute resolution

2984 process provided for in the rules is a final agency action subject to judicial review as provided

2985 in Sections 63G-4-401 and 63G-4-402;

2986 (xi) a requirement that a claim or dispute that does not include a monetary claim

2987 against the division or its agents is not limited to the dispute resolution process provided for in

2988 this Subsection (6);

2989 (xii) requirements for claims and disputes to be eligible for this dispute resolution

2990 process;

2991 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

2992 (xiv) the circumstances under which a subcontractor may file a claim directly with the

2993 division.

2994 (d) Persons pursuing claims under the process required by this Subsection (6):

2995 (i) are bound by the decision reached under this process unless the decision is properly

2996 appealed; and

2997 (ii) may not pursue claims or disputes under the dispute resolution process established

2998 in Sections [~~63G-6-805 through 63G-6-814~~] 63G-6a-1602 through 63G-6a-1802.

2999 (7) In addition to all other reasons allowed by law or rule, the director may reject all
3000 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor
3001 list that meets the requirements of this section.

3002 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,
3003 subcontractor, or supplier, may be grounds for:

3004 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the
3005 director; or

3006 (b) the contractor or subcontractor to be disciplined by the Division of Professional and
3007 Occupational Licensing.

3008 Section 60. Section **63A-5-302** is amended to read:

3009 **63A-5-302. Leasing responsibilities of the director.**

3010 (1) The director shall:

3011 (a) lease, in the name of the division, all real property space to be occupied by an
3012 agency;

3013 (b) in leasing space, comply with:

3014 (i) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

3015 (ii) any legislative mandates contained in the appropriations act or other specific
3016 legislation;

3017 (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each
3018 high-cost lease at least 12 months before it expires;

3019 (d) evaluate each lease under the division's control and apply the criteria contained in
3020 Subsection (1)(e), when appropriate, to evaluate those leases;

3021 (e) in evaluating leases:

3022 (i) determine whether or not the lease is cost-effective when the needs of the agency to
3023 be housed in the leased facilities are considered;

3024 (ii) determine whether or not another option such as construction, use of other
3025 state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

(iii) determine whether or not the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;

(iv) compare the proposed lease payments to the current market rates, and evaluate whether or not the proposed lease payments are reasonable under current market conditions;

(v) compare proposed significant lease terms to the current market, and recommend whether or not these proposed terms are reasonable under current market conditions; and

(vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;

(f) based upon the evaluation, include in the report recommendations that identify viable alternatives to:

(i) make the lease cost-effective; or

(ii) meet the agency's needs when the lease expires; and

(g) upon request, provide the information included in the report to:

(i) the agency benefitted by the lease; and

(ii) the Office of Legislative Fiscal Analyst.

(2) The director may:

(a) subject to legislative appropriation, enter into facility leases with terms of up to 10 years when the length of the lease's term is economically advantageous to the state; and

(b) with the approval of the State Building Board and subject to legislative appropriation, enter into facility leases with terms of more than 10 years when the length of the lease's term is economically advantageous to the state.

Section 61. Section **63B-2-102** is amended to read:

63B-2-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$80,000,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and

3054 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3055 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3056 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3057 covered by construction of the projects plus a period of six months after the end of the
 3058 construction period and all related engineering, architectural, and legal fees.

3059 (c) For the division, proceeds shall be provided for the following:

3060 CAPITAL IMPROVEMENTS

3061	1	Alterations, Repairs, and Improvements	\$8,413,900
3062		TOTAL IMPROVEMENTS	\$8,413,900

3063 CAPITAL FACILITIES CONSTRUCTION

3064			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED
3065	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700 \$158,000
3066	2	University of Utah Marriot Library Phase II	\$10,200,000 \$881,600
3067	3	Ogden Courts Building Phase II	\$12,096,000 \$340,000
3068	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800 \$70,500
3069	5	Southern Utah University Library Phase II	\$7,004,400 \$427,000
3070	6	Utah Valley Special Events Center Phase II	\$11,845,300 \$536,900

3071	7	Salt Lake Community College - Land	\$1,300,000	\$0
3072	8	Tax Commission Building	\$14,224,000	\$812,000
3073	9	Dixie College Business Building	\$2,823,300	\$187,800
3074	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
3075	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
3076		TOTAL CONSTRUCTION	\$70,086,100	
3077		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

3078 (d) For purposes of this section, operations and maintenance costs:

3079 (i) are estimates only;

3080 (ii) may include any operations and maintenance costs already funded in existing
3081 agency budgets; and

3082 (iii) are not commitments by this Legislature or future Legislatures to fund those
3083 operations and maintenance costs.

3084 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3085 constitute a limitation on the amount that may be expended for any project.

3086 (b) The board may revise these estimates and redistribute the amount estimated for a
3087 project among the projects authorized.

3088 (c) The commission, by resolution and in consultation with the board, may delete one
3089 or more projects from this list if the inclusion of that project or those projects in the list could
3090 be construed to violate state law or federal law or regulation.

3091 (4) (a) The division may enter into agreements related to these projects before the
3092 receipt of proceeds of bonds issued under this chapter.

3093 (b) The division shall make those expenditures from unexpended and unencumbered
3094 building funds already appropriated to the Capital Projects Fund.

3095 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3096 of bonds issued under this chapter.

3097 (d) The commission may, by resolution, make any statement of intent relating to that
3098 reimbursement that is necessary or desirable to comply with federal tax law.

3099 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3100 it is the intent of the Legislature that the balance necessary to complete the projects be
3101 addressed by future Legislatures, either through appropriations or through the issuance or sale
3102 of bonds.

3103 (b) For those phased projects, the division may enter into contracts for amounts not to
3104 exceed the anticipated full project funding but may not allow work to be performed on those
3105 contracts in excess of the funding already authorized by the Legislature.

3106 (c) Those contracts shall contain a provision for termination of the contract for the
3107 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3108 (d) It is also the intent of the Legislature that this authorization to the division does not
3109 bind future Legislatures to fund projects initiated from this authorization.

3110 Section 62. Section **63B-3-102** is amended to read:

3111 **63B-3-102. Maximum amount -- Projects authorized.**

3112 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

3113 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3114 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3115 Subsection (2).

3116 (b) These costs may include the cost of acquiring land, interests in land, easements and
3117 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3118 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3119 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3120 covered by construction of the projects plus a period of six months after the end of the
3121 construction period and all related engineering, architectural, and legal fees.

3122 (c) For the division, proceeds shall be provided for the following:

3123		CAPITAL IMPROVEMENTS		
3124	1	Alterations, Repairs, and Improvements		\$5,000,000
3125		TOTAL IMPROVEMENTS		\$5,000,000
3126		CAPITAL AND ECONOMIC DEVELOPMENT		
3127			ESTIMATED OPERATIONS AND MAINTENANCE COSTS	
	PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED	
3128	1	University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
3129	2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0
3130	3	Weber State University - Heat Plant	\$2,332,100	\$9,600
3131	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
3132	5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
3133	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
3134	7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000

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3135	8	Utah State University - Old Main Phase III Design	\$550,000	\$0
3136	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
3137	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
3138	11	Anasazi Museum	\$760,200	\$8,500
3139	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
3140	13	Signetics Building Remodel	\$2,000,000	\$0
3141	14	Antelope Island Visitors Center	\$750,000	\$30,000
3142	15	State Fair Park - Master Study	\$150,000	\$0
3143	16	Utah National Guard - Draper Land	\$380,800	\$0
3144	17	Davis Applied Technology Center - Design	\$325,000	\$0
3145	18	Palisade State Park - Land and Park Development	\$800,000	\$0
3146	19	Department of Human Services - Cedar City Land	\$80,000	\$0
3147	20	Department of Human Services - Clearfield Land	\$163,400	\$0
3148	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
3149	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$58,885,600	
3150	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$63,885,600	

3151 (d) For purposes of this section, operations and maintenance costs:

3152 (i) are estimates only;

3153 (ii) may include any operations and maintenance costs already funded in existing

3154 agency budgets; and

3155 (iii) are not commitments by this Legislature or future Legislatures to fund those

3156 operations and maintenance costs.

3157 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3158 constitute a limitation on the amount that may be expended for any project.

3159 (b) The board may revise these estimates and redistribute the amount estimated for a
3160 project among the projects authorized.

3161 (c) The commission, by resolution and in consultation with the board, may delete one
3162 or more projects from this list if the inclusion of that project or those projects in the list could
3163 be construed to violate state law or federal law or regulation.

3164 (4) (a) The division may enter into agreements related to these projects before the
3165 receipt of proceeds of bonds issued under this chapter.

3166 (b) The division shall make those expenditures from unexpended and unencumbered
3167 building funds already appropriated to the Capital Projects Fund.

3168 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3169 of bonds issued under this chapter.

3170 (d) The commission may, by resolution, make any statement of intent relating to that
3171 reimbursement that is necessary or desirable to comply with federal tax law.

3172 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3173 it is the intent of the Legislature that the balance necessary to complete the projects be
3174 addressed by future Legislatures, either through appropriations or through the issuance or sale
3175 of bonds.

3176 (b) For those phased projects, the division may enter into contracts for amounts not to
3177 exceed the anticipated full project funding but may not allow work to be performed on those
3178 contracts in excess of the funding already authorized by the Legislature.

3179 (c) Those contracts shall contain a provision for termination of the contract for the
 3180 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3181 (d) It is also the intent of the Legislature that this authorization to the division does not
 3182 bind future Legislatures to fund projects initiated from this authorization.

3183 Section 63. Section **63B-4-102** is amended to read:

3184 **63B-4-102. Maximum amount -- Projects authorized.**

3185 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

3186 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3187 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3188 Subsection (2).

3189 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3190 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3191 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3192 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3193 covered by construction of the projects plus a period of six months after the end of the
 3194 construction period, and all related engineering, architectural, and legal fees.

3195 (c) For the division, proceeds shall be provided for the following:

3196 CAPITAL IMPROVEMENTS

3197 Alterations, Repairs, and Improvements \$7,200,000

3198 TOTAL IMPROVEMENTS \$7,200,000

3199 CAPITAL AND ECONOMIC DEVELOPMENT

3200		ESTIMATED OPERATIONS AND
	PROJECT DESCRIPTION	AMOUNT FUNDED MAINTENANCE COSTS
3201	Corrections - Uinta IVA	\$11,300,000 \$212,800

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3202	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
3203	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
3204	Project Reserve Fund	\$3,500,000	None
3205	Weber State University - Browning Center Remodel	\$3,300,000	None
3206	Heber Wells Building Remodel	\$2,000,000	None
3207	Higher Education Davis County - Land Purchase	\$1,600,000	None
3208	National Guard -- Provo Armory	\$1,500,000	\$128,000
3209	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
3210	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
3211	Salt Lake Community College - South Valley Planning	\$300,000	None
3212	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
3213	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
3214	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000
3215	(d) For purposes of this section, operations and maintenance costs:		
3216	(i) are estimates only;		
3217	(ii) may include any operations and maintenance costs already funded in existing		
3218	agency budgets; and		
3219	(iii) are not commitments by this Legislature or future Legislatures to fund those		

3220 operations and maintenance costs.

3221 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3222 constitute a limitation on the amount that may be expended for any project.

3223 (b) The board may revise these estimates and redistribute the amount estimated for a
3224 project among the projects authorized.

3225 (c) The commission, by resolution and in consultation with the board, may delete one
3226 or more projects from this list if the inclusion of that project or those projects in the list could
3227 be construed to violate state law or federal law or regulation.

3228 (4) (a) The division may enter into agreements related to these projects before the
3229 receipt of proceeds of bonds issued under this chapter.

3230 (b) The division shall make those expenditures from unexpended and unencumbered
3231 building funds already appropriated to the Capital Projects Fund.

3232 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3233 of bonds issued under this chapter.

3234 (d) The commission may, by resolution, make any statement of intent relating to that
3235 reimbursement that is necessary or desirable to comply with federal tax law.

3236 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3237 it is the intent of the Legislature that the balance necessary to complete the projects be
3238 addressed by future Legislatures, either through appropriations or through the issuance or sale
3239 of bonds.

3240 (b) For those phased projects, the division may enter into contracts for amounts not to
3241 exceed the anticipated full project funding but may not allow work to be performed on those
3242 contracts in excess of the funding already authorized by the Legislature.

3243 (c) Those contracts shall contain a provision for termination of the contract for the
3244 convenience of the state as required by Section ~~[63G-6-601]~~ 63G-6a-1202.

3245 (d) It is also the intent of the Legislature that this authorization to the division does not
3246 bind future Legislatures to fund projects initiated from this authorization.

3247 Section 64. Section **63B-5-102** is amended to read:

3248 **63B-5-102. Maximum amount -- Projects authorized.**

3249 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

3250 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3251 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3252 Subsection (2).3253 (b) These costs may include the cost of acquiring land, interests in land, easements and
3254 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3255 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3256 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3257 covered by construction of the projects plus a period of six months after the end of the
3258 construction period, and all related engineering, architectural, and legal fees.

3259 (c) For the division, proceeds shall be provided for the following:

3260 **CAPITAL IMPROVEMENTS**

3261 Alterations, Repairs, and Improvements \$7,600,000

3262 **TOTAL IMPROVEMENTS** \$7,600,0003263 **CAPITAL AND ECONOMIC DEVELOPMENT**3264 **ESTIMATED
OPERATIONS
AND
AMOUNT MAINTENANCE
PROJECT DESCRIPTION FUNDED COSTS**

3265 Corrections - Gunnison (192 Beds) \$13,970,000 \$210,000

3266 University of Utah -- Gardner Hall \$7,361,000 \$203,900

3267 Weber State University Davis Campus -- Land \$771,000 None
Purchase3268 Department of Workforce Services Cedar City \$148,000 None
-- Land Purchase

3269	College of Eastern Utah Durrant School -- Land Purchase	\$400,000	None
3270	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
3271	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000	
3272	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000	
3273	(d) For purposes of this section, operations and maintenance costs:		
3274	(i) are estimates only;		
3275	(ii) may include any operations and maintenance costs already funded in existing		
3276	agency budgets; and		
3277	(iii) are not commitments by this Legislature or future Legislatures to fund those		
3278	operations and maintenance costs.		
3279	(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not		
3280	constitute a limitation on the amount that may be expended for any project.		
3281	(b) The board may revise these estimates and redistribute the amount estimated for a		
3282	project among the projects authorized.		
3283	(c) The commission, by resolution and in consultation with the board, may delete one		
3284	or more projects from this list if the inclusion of that project or those projects in the list could		
3285	be construed to violate state law or federal law or regulation.		
3286	(4) (a) The division may enter into agreements related to these projects before the		
3287	receipt of proceeds of bonds issued under this chapter.		
3288	(b) The division shall make those expenditures from unexpended and unencumbered		
3289	building funds already appropriated to the Capital Projects Fund.		
3290	(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds		
3291	of bonds issued under this chapter.		
3292	(d) The commission may, by resolution, make any statement of intent relating to that		

3293 reimbursement that is necessary or desirable to comply with federal tax law.

3294 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3295 it is the intent of the Legislature that the balance necessary to complete the projects be
3296 addressed by future Legislatures, either through appropriations or through the issuance or sale
3297 of bonds.

3298 (b) For those phased projects, the division may enter into contracts for amounts not to
3299 exceed the anticipated full project funding but may not allow work to be performed on those
3300 contracts in excess of the funding already authorized by the Legislature.

3301 (c) Those contracts shall contain a provision for termination of the contract for the
3302 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3303 (d) It is also the intent of the Legislature that this authorization to the division does not
3304 bind future Legislatures to fund projects initiated from this authorization.

3305 Section 65. Section **63B-6-102** is amended to read:

3306 **63B-6-102. Maximum amount -- Projects authorized.**

3307 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

3308 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3309 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3310 Subsection (2).

3311 (b) These costs may include the cost of acquiring land, interests in land, easements and
3312 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3313 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3314 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3315 covered by construction of the projects plus a period of six months after the end of the
3316 construction period, and all related engineering, architectural, and legal fees.

3317 (c) For the division, proceeds shall be provided for the following:

3318 CAPITAL AND ECONOMIC DEVELOPMENT

3319		ESTIMATED OPERATIONS AND
	PROJECT DESCRIPTION	AMOUNT FUNDED MAINTENANCE
3320	Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100 \$70,000
3321	State Hospital - 100 bed Forensic Facility	\$13,800,700 \$320,600
3322	Utah State University - Widtsoe Hall	\$23,986,700 \$750,200
3323	Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900 \$144,000
3324	Southern Utah University -- Physical Education Building (Design)	\$1,100,000 \$456,100
3325	Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000 \$718,500
3326	Department of Natural Resources - Antelope Island Road	\$3,600,000 None
3327	Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000 None
3328	Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000 \$5,700
3329	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400
3330	(d) For purposes of this section, operations and maintenance costs:	
3331	(i) are estimates only;	
3332	(ii) may include any operations and maintenance costs already funded in existing	
3333	agency budgets; and	
3334	(iii) are not commitments by this Legislature or future Legislatures to fund those	
3335	operations and maintenance costs.	

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section ~~[63G-6-601]~~ 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 66. Section **63B-6-402** is amended to read:

63B-6-402. Maximum amount -- Projects authorized.

3364 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

3365 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
3366 Commission to provide funds to pay all or part of the cost of the project described in this
3367 Subsection (2).

3368 (b) These costs may include:

3369 (i) the cost of acquisition, development, and conversion of computer hardware and
3370 software for motor vehicle fee systems and tax collection and accounting systems of the state;

3371 (ii) interest estimated to accrue on these bonds during the period to be covered by that
3372 development and conversion, plus a period of six months following the completion of the
3373 development and conversion; and

3374 (iii) all related engineering, consulting, and legal fees.

3375 (c) For the State Tax Commission, proceeds shall be provided for the following:

3376	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
3377	UTAX SYSTEMS ACQUISITION AND	\$8,500,000
	DEVELOPMENT	

3378 (3) The commission, by resolution may decline to issue bonds if the project could be
3379 construed to violate state law or federal law or regulation.

3380 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
3381 is the intent of the Legislature that the balance necessary to complete the project be addressed
3382 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

3383 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
3384 anticipated full project funding but may not allow work to be performed on those contracts in
3385 excess of the funding already authorized by the Legislature.

3386 (c) Those contracts shall contain a provision for termination of the contract for the
3387 convenience of the state as required by Section ~~[63G-6-601]~~ 63G-6a-1202.

3388 (d) It is also the intent of the Legislature that this authorization to the State Tax
3389 Commission does not bind future Legislatures to fund projects initiated from this authorization.

3390 Section 67. Section **63B-7-102** is amended to read:

3391 **63B-7-102. Maximum amount -- Projects authorized.**

3392 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

3393 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3394 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3395 Subsection (2).

3396 (b) These costs may include the cost of acquiring land, interests in land, easements and
3397 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3398 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3399 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3400 covered by construction of the projects plus a period of six months after the end of the
3401 construction period, and all related engineering, architectural, and legal fees.

3402 (c) For the division, proceeds shall be provided for the following:

	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
3404	Southern Utah University Land Purchase	\$4,600,000	\$0
3405	Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900
3406	Children's Special Health Care Needs Clinic	\$755,400	\$247,600
3407	Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
3408	Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
3409	University of Utah - Cowles Building	\$445,500	\$101,700
3410	Utah Valley State College - Technical Building	\$1,166,300	\$391,000

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3411	Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
3412	Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
3413	Murray Highway Patrol Office	\$2,300,000	\$81,000
3414	Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
3415	State Hospital - Rampton II	\$1,600,000	\$462,000
3416	Courts - 4th District Land - Provo	\$1,368,000	\$0
3417	Dixie College - Land	\$1,000,000	\$0
3418	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

3419 (d) For purposes of this section, operations and maintenance costs:

3420 (i) are estimates only;

3421 (ii) may include any operations and maintenance costs already funded in existing
3422 agency budgets; and

3423 (iii) are not commitments by this Legislature or future Legislatures to fund those
3424 operations and maintenance costs.

3425 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3426 constitute a limitation on the amount that may be expended for any project.

3427 (b) The board may revise these estimates and redistribute the amount estimated for a
3428 project among the projects authorized.

3429 (c) The commission, by resolution and in consultation with the board, may delete one
3430 or more projects from this list if the inclusion of that project or those projects in the list could
3431 be construed to violate state law or federal law or regulation.

3432 (4) (a) The division may enter into agreements related to these projects before the
3433 receipt of proceeds of bonds issued under this chapter.

3434 (b) The division shall make those expenditures from unexpended and unencumbered
3435 building funds already appropriated to the Capital Projects Fund.

3436 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3437 of bonds issued under this chapter.

3438 (d) The commission may, by resolution, make any statement of intent relating to that
3439 reimbursement that is necessary or desirable to comply with federal tax law.

3440 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3441 it is the intent of the Legislature that the balance necessary to complete the projects be
3442 addressed by future Legislatures, either through appropriations or through the issuance or sale
3443 of bonds.

3444 (b) For those phased projects, the division may enter into contracts for amounts not to
3445 exceed the anticipated full project funding but may not allow work to be performed on those
3446 contracts in excess of the funding already authorized by the Legislature.

3447 (c) Those contracts shall contain a provision for termination of the contract for the
3448 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3449 (d) It is also the intent of the Legislature that this authorization to the division does not
3450 bind future Legislatures to fund projects initiated from this authorization.

3451 Section 68. Section **63B-7-402** is amended to read:

3452 **63B-7-402. Maximum amount -- Projects authorized.**

3453 (1) The total amount of bonds issued under this part may not exceed \$16,500,000.

3454 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
3455 Commission to provide funds to pay all or part of the cost of the project described in this
3456 Subsection (2).

3457 (b) These costs may include:

3458 (i) the cost of acquisition, development, and conversion of computer hardware and
3459 software for motor vehicle fee systems and tax collection and accounting systems of the state;

3460 (ii) interest estimated to accrue on these bonds during the period to be covered by that
3461 development and conversion, plus a period of six months following the completion of the

3462 development and conversion; and

3463 (iii) all related engineering, consulting, and legal fees.

3464 (c) For the State Tax Commission, proceeds shall be provided for the following:

3465	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
3466	UTAX SYSTEMS ACQUISITION AND	\$15,650,000
	DEVELOPMENT	

3467 (3) The commission, by resolution may decline to issue bonds if the project could be
3468 construed to violate state law or federal law or regulation.

3469 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
3470 is the intent of the Legislature that the balance necessary to complete the project be addressed
3471 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

3472 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
3473 anticipated full project funding but may not allow work to be performed on those contracts in
3474 excess of the funding already authorized by the Legislature.

3475 (c) Those contracts shall contain a provision for termination of the contract for the
3476 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3477 (d) It is also the intent of the Legislature that this authorization to the State Tax
3478 Commission does not bind future Legislatures to fund projects initiated from this authorization.
3479 Section 69. Section **63B-8-102** is amended to read:

3480 **63B-8-102. Maximum amount -- Projects authorized.**

3481 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

3482 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3483 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3484 Subsection (2).

3485 (b) These costs may include the cost of acquiring land, interests in land, easements and
3486 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3487 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or

3488 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3489 covered by construction of the projects plus a period of six months after the end of the
 3490 construction period, and all related engineering, architectural, and legal fees.

3491 (c) For the division, proceeds shall be provided for the following:

	ESTIMATED OPERATIONS AND MAINTENANCE
PROJECT DESCRIPTION	AMOUNT FUNDED
3493 Southern Utah University - Physical Education Building	\$2,493,200 \$447,744
3494 Utah Valley State College - Information Sciences Building	\$29,000,000 \$721,875
3495 University of Utah - Cowles Building Renovation	\$7,268,500 \$140,217
3496 Vernal District Court	\$4,539,500 \$149,989
3497 Salt Lake Community College - Applied Education Center	\$4,200,000 \$281,784
3498 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$47,501,200

3499 (d) For purposes of this section, operations and maintenance costs:

3500 (i) are estimates only;

3501 (ii) may include any operations and maintenance costs already funded in existing
 3502 agency budgets; and

3503 (iii) are not commitments by this Legislature or future Legislatures to fund those
 3504 operations and maintenance costs.

3505 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
 3506 constitute a limitation on the amount that may be expended for any project.

3507 (b) The board may revise these estimates and redistribute the amount estimated for a

3508 project among the projects authorized.

3509 (c) The commission, by resolution and in consultation with the board, may delete one
3510 or more projects from this list if the inclusion of that project or those projects in the list could
3511 be construed to violate state law or federal law or regulation.

3512 (4) (a) The division may enter into agreements related to these projects before the
3513 receipt of proceeds of bonds issued under this chapter.

3514 (b) The division shall make those expenditures from unexpended and unencumbered
3515 building funds already appropriated to the Capital Projects Fund.

3516 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3517 of bonds issued under this chapter.

3518 (d) The commission may, by resolution, make any statement of intent relating to that
3519 reimbursement that is necessary or desirable to comply with federal tax law.

3520 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3521 it is the intent of the Legislature that the balance necessary to complete the projects be
3522 addressed by future Legislatures, either through appropriations or through the issuance or sale
3523 of bonds.

3524 (b) For those phased projects, the division may enter into contracts for amounts not to
3525 exceed the anticipated full project funding but may not allow work to be performed on those
3526 contracts in excess of the funding already authorized by the Legislature.

3527 (c) Those contracts shall contain a provision for termination of the contract for the
3528 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3529 (d) It is also the intent of the Legislature that this authorization to the division does not
3530 bind future Legislatures to fund projects initiated from this authorization.

3531 Section 70. Section **63B-8-402** is amended to read:

3532 **63B-8-402. Maximum amount -- Projects authorized.**

3533 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

3534 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3535 funds to pay all or part of the cost of acquiring and constructing the project listed in this

3536 Subsection (2).

3537 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3538 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3539 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3540 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3541 covered by construction of the projects plus a period of six months after the end of the
 3542 construction period, and all related engineering, architectural, and legal fees.

3543 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
State Hospital - Rampton II	\$7,000,000	\$462,000

3546 (d) For purposes of this section, operations and maintenance costs:

3547 (i) are estimates only;

3548 (ii) may include any operations and maintenance costs already funded in existing
 3549 agency budgets; and

3550 (iii) are not commitments by this Legislature or future Legislatures to fund those
 3551 operations and maintenance costs.

3552 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
 3553 constitute a limitation on the amount that may be expended for any project.

3554 (b) The board may revise these estimates and redistribute the amount estimated for a
 3555 project among the projects authorized.

3556 (c) The commission, by resolution and in consultation with the board, may delete one
 3557 or more projects from this list if the inclusion of that project or those projects in the list could
 3558 be construed to violate state law or federal law or regulation.

3559 (4) (a) The division may enter into agreements related to these projects before the
 3560 receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 71. Section **63B-9-103** is amended to read:

63B-9-103. Other capital facility authorizations and intent language.

(1) It is the intent of the Legislature that:

(a) Utah State University use institutional funds to plan, design, and construct a renovation and expansion of the Edith Bowen School under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

3589 (2) It is the intent of the Legislature that:

3590 (a) the University of Utah use institutional funds to plan, design, and construct a
3591 College of Science Math Center under the direction of the director of the Division of Facilities
3592 Construction and Management unless supervisory authority has been delegated;

3593 (b) no state funds be used for any portion of this project; and

3594 (c) the university may request state funds for operations and maintenance to the extent
3595 that the university is able to demonstrate to the Board of Regents that the facility meets
3596 approved academic and training purposes under Board of Regents policy R710.

3597 (3) It is the intent of the Legislature that:

3598 (a) the University of Utah use institutional funds to plan, design, and construct a
3599 Burbidge Athletics and Academics Building under the direction of the director of the Division
3600 of Facilities Construction and Management unless supervisory authority has been delegated;

3601 (b) no state funds be used for any portion of this project; and

3602 (c) the university may not request state funds for operations and maintenance.

3603 (4) It is the intent of the Legislature that:

3604 (a) the University of Utah use institutional funds to plan, design, and construct an
3605 expansion to the bookstore under the direction of the director of the Division of Facilities
3606 Construction and Management unless supervisory authority has been delegated;

3607 (b) no state funds be used for any portion of this project; and

3608 (c) the university may not request state funds for operations and maintenance.

3609 (5) It is the intent of the Legislature that:

3610 (a) the University of Utah use institutional funds to plan, design, and construct a Health
3611 Sciences/Basic Sciences Building under the direction of the director of the Division of
3612 Facilities Construction and Management unless supervisory authority has been delegated;

3613 (b) no state funds be used for any portion of this project; and

3614 (c) the university may request state funds for operations and maintenance to the extent
3615 that the university is able to demonstrate to the Board of Regents that the facility meets
3616 approved academic and training purposes under Board of Regents policy R710.

3617 (6) It is the intent of the Legislature that:

3618 (a) Weber State University use institutional funds to plan, design, and construct an
3619 expansion to the stadium under the direction of the director of the Division of Facilities
3620 Construction and Management unless supervisory authority has been delegated;

3621 (b) no state funds be used for any portion of this project; and

3622 (c) the university may not request state funds for operations and maintenance.

3623 (7) It is the intent of the Legislature that:

3624 (a) Utah Valley State College use institutional funds to plan, design, and construct a
3625 baseball stadium under the direction of the director of the Division of Facilities Construction
3626 and Management unless supervisory authority has been delegated;

3627 (b) no state funds be used for any portion of this project; and

3628 (c) the college may not request state funds for operations and maintenance.

3629 (8) It is the intent of the Legislature that:

3630 (a) Southern Utah University use institutional funds to plan, design, and construct a
3631 weight training room under the direction of the director of the Division of Facilities
3632 Construction and Management unless supervisory authority has been delegated;

3633 (b) no state funds be used for any portion of this project; and

3634 (c) the university may not request state funds for operations and maintenance.

3635 (9) It is the intent of the Legislature that:

3636 (a) Snow College may lease land at the Snow College Richfield campus to a private
3637 developer for the construction and operation of student housing;

3638 (b) the oversight and inspection of the construction comply with Section 63A-5-206;

3639 (c) no state funds be used for any portion of this project; and

3640 (d) the college may not request state funds for operations and maintenance.

3641 (10) It is the intent of the Legislature that:

3642 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
3643 School District for the construction and operation of an Applied Technology Education Center;

3644 (b) the oversight and inspection of the construction comply with Section 63A-5-206;

3645 (c) no state funds be used for any portion of this project; and

3646 (d) the college may not request state funds for operations and maintenance.

3647 (11) It is the intent of the Legislature that:

3648 (a) the Department of Transportation exchange its maintenance station at Kimball

3649 Junction for property located near Highway 40 in Summit County; and

3650 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake

3651 Organizing Committee for the use of the maintenance station, and any net proceeds resulting

3652 from the exchange of property to construct a replacement facility under the direction of the

3653 director of the Division of Facilities Construction and Management unless supervisory

3654 authority has been delegated.

3655 (12) It is the intent of the Legislature that:

3656 (a) the Department of Transportation sell surplus property in Utah County;

3657 (b) the Department of Transportation use funds from that sale to remodel existing

3658 space and add an addition to the Region 3 Complex; and

3659 (c) the project cost not exceed the funds received through sale of property.

3660 (13) It is the intent of the Legislature that the Department of Workforce Services use

3661 proceeds from property sales to purchase additional property adjacent to its state-owned facility

3662 in Logan.

3663 (14) (a) It is the intent of the Legislature that, because only partial funding is provided

3664 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to

3665 complete this project be addressed by future Legislatures, either through appropriations or

3666 through the issuance of bonds.

3667 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for

3668 amounts not to exceed the anticipated full project funding but may not allow work to be

3669 performed on those contracts in excess of the funding already authorized by the Legislature.

3670 (ii) Those contracts shall contain a provision for termination of the contract for the

3671 convenience of the state as required by Section ~~[63G-6-601]~~ 63G-6a-1202.

3672 (c) It is also the intent of the Legislature that this authorization to the division does not

3673 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

3674 Section 72. Section **63B-11-202** is amended to read:

3675 **63B-11-202. Maximum amount -- Projects authorized.**

3676 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

3677 (b) When Utah State University certifies to the commission that the university has
 3678 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
 3679 construct an addition to the new engineering building and demolish the existing engineering
 3680 classroom building, the commission may issue and sell general obligation bonds in a total
 3681 amount not to exceed \$6,100,000.

3682 (c) When the University of Utah certifies to the commission that the university has
 3683 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
 3684 to construct a new engineering building, the commission may issue and sell general obligation
 3685 bonds in a total amount not to exceed \$15,150,000.

3686 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3687 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3688 Subsection (2).

3689 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3690 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3691 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3692 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3693 covered by construction of the projects plus a period of six months after the end of the
 3694 construction period, and all related engineering, architectural, and legal fees.

3695 (c) For the division, proceeds shall be provided for the following:

3696		ESTIMATED OPERATING AND MAINTENANCE COSTS
	PROJECT DESCRIPTION	AMOUNT FUNDED

3697	1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
3698	2. University of Utah New Engineering Building	\$15,000,000	\$489,000
3699	COSTS OF ISSUANCE	\$306,500	
3700	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000
3701	(d) For purposes of this section, operations and maintenance costs:		
3702	(i) are estimates only;		
3703	(ii) may include any operations and maintenance costs already funded in existing		
3704	agency budgets; and		
3705	(iii) are not commitments by this Legislature or future Legislatures to fund those		
3706	operations and maintenance costs.		
3707	(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not		
3708	constitute a limitation on the amount that may be expended for any project.		
3709	(b) The board may revise these estimates and redistribute the amount estimated for a		
3710	project among the projects authorized.		
3711	(c) The commission, by resolution and in consultation with the board, may delete one		
3712	or more projects from this list if the inclusion of that project or those projects in the list could		
3713	be construed to violate state law or federal law or regulation.		
3714	(4) (a) The division may enter into agreements related to these projects before the		
3715	receipt of proceeds of bonds issued under this chapter.		
3716	(b) The division shall make those expenditures from unexpended and unencumbered		
3717	building funds already appropriated to the Capital Projects Fund.		
3718	(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds		
3719	of bonds issued under this chapter.		
3720	(d) The commission may, by resolution, make any statement of intent relating to that		
3721	reimbursement that is necessary or desirable to comply with federal tax law.		
3722	(5) (a) For those projects for which only partial funding is provided in Subsection (2),		

3723 it is the intent of the Legislature that the balance necessary to complete the projects be
3724 addressed by future Legislatures, either through appropriations or through the issuance or sale
3725 of bonds.

3726 (b) For those phased projects, the division may enter into contracts for amounts not to
3727 exceed the anticipated full project funding but may not allow work to be performed on those
3728 contracts in excess of the funding already authorized by the Legislature.

3729 (c) Those contracts shall contain a provision for termination of the contract for the
3730 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3731 (d) It is also the intent of the Legislature that this authorization to the division does not
3732 bind future Legislatures to fund projects initiated from this authorization.

3733 Section 73. Section **63C-7-210** is amended to read:

3734 **63C-7-210. Exemption from certain acts.**

3735 (1) The Utah Communications Agency Network is exempt from:

3736 (a) Title 63J, Chapter 1, Budgetary Procedures Act;

3737 (b) Title 63A, Utah Administrative Services Code, except as provided in Section
3738 63A-4-205.5;

3739 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

3740 (d) Title 63G, Chapter 4, Administrative Procedures Act; and

3741 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

3742 (2) The board shall adopt budgetary procedures, accounting, procurement, and
3743 personnel policies substantially similar to those from which they have been exempted in
3744 Subsection (1).

3745 Section 74. Section **63C-9-301** is amended to read:

3746 **63C-9-301. Board powers -- Subcommittees.**

3747 (1) The board shall:

3748 (a) except as provided in Subsection (2), exercise complete jurisdiction and
3749 stewardship over capitol hill facilities, capitol hill grounds, and the capitol hill complex;

3750 (b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities,

3751 capitol hill grounds, and their contents;

3752 (c) before October 1 of each year, review and approve the executive director's annual

3753 budget request for submittal to the governor and Legislature;

3754 (d) by October 1 of each year, prepare and submit a recommended budget request for

3755 the upcoming fiscal year for the capitol hill complex to:

3756 (i) the governor, through the Governor's Office of Planning and Budget; and

3757 (ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities,

3758 through the Office of Legislative Fiscal Analyst;

3759 (e) review and approve the executive director's:

3760 (i) annual work plan;

3761 (ii) long-range master plan for the capitol hill complex, capitol hill facilities, and

3762 capitol hill grounds; and

3763 (iii) furnishings plan for placement and care of objects under the care of the board;

3764 (f) approve all changes to the buildings and their grounds, including:

3765 (i) restoration, remodeling, and rehabilitation projects;

3766 (ii) usual maintenance program; and

3767 (iii) any transfers or loans of objects under the board's care;

3768 (g) define and identify all significant aspects of the capitol hill complex, capitol hill

3769 facilities, and capitol hill grounds, after consultation with the:

3770 (i) Division of Facilities Construction and Management;

3771 (ii) State Library Division;

3772 (iii) Division of Archives and Records Service;

3773 (iv) Division of State History;

3774 (v) Office of Museum Services; and

3775 (vi) Arts Council;

3776 (h) inventory, define, and identify all significant contents of the buildings and all

3777 state-owned items of historical significance that were at one time in the buildings, after

3778 consultation with the:

- 3779 (i) Division of Facilities Construction and Management;
3780 (ii) State Library Division;
3781 (iii) Division of Archives and Records Service;
3782 (iv) Division of State History;
3783 (v) Office of Museum Services; and
3784 (vi) Arts Council;
- 3785 (i) maintain archives relating to the construction and development of the buildings, the
3786 contents of the buildings and their grounds, including documents such as plans, specifications,
3787 photographs, purchase orders, and other related documents, the original copies of which shall
3788 be maintained by the Division of Archives and Records Service;
- 3789 (j) comply with federal and state laws related to program and facility accessibility; and
3790 (k) establish procedures for receiving, hearing, and deciding complaints or other issues
3791 raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their
3792 use.
- 3793 (2) (a) Notwithstanding Subsection (1)(a), the supervision and control of the legislative
3794 area, as defined in Section 36-5-1, is reserved to the Legislature; and
- 3795 (b) the supervision and control of the governor's area, as defined in Section 67-1-16, is
3796 reserved to the governor.
- 3797 (3) (a) The board shall make rules to govern, administer, and regulate the capitol hill
3798 complex, capitol hill facilities, and capitol hill grounds by following the procedures and
3799 requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3800 (b) A person who violates a rule adopted by the board under the authority of this
3801 Subsection (3) is subject to a civil penalty not to exceed \$2,500 for each violation, plus the
3802 amount of any actual damages, expenses, and costs related to the violation of the rule that are
3803 incurred by the state.
- 3804 (c) The board may take any other legal action allowed by law.
- 3805 (d) If any violation of a rule adopted by the board is also an offense under Title 76,
3806 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs

3807 allowed under this Subsection (3) in addition to any criminal prosecution.

3808 (e) The board may not apply this section or rules adopted under the authority of this
3809 section in a manner that violates a person's rights under the Utah Constitution or the First
3810 Amendment to the United States Constitution, including the right of persons to peaceably
3811 assemble.

3812 (f) The board shall send proposed rules under this section to the legislative general
3813 counsel and the governor's general counsel for review and comment before the board adopts the
3814 rules.

3815 (4) The board is exempt from the requirements of Title 63G, Chapter [6] 6a, Utah
3816 Procurement Code, but shall adopt procurement rules substantially similar to the requirements
3817 of that chapter.

3818 (5) (a) The board may:

3819 (i) establish subcommittees made up of board members and members of the public to
3820 assist and support the executive director in accomplishing the executive director's duties;

3821 (ii) establish fees for the use of capitol hill facilities and capitol hill grounds;

3822 (iii) assign and allocate specific duties and responsibilities to any other state agency, if
3823 the other agency agrees to perform the duty or accept the responsibility;

3824 (iv) contract with another state agency to provide services;

3825 (v) delegate by specific motion of the board any authority granted to it by this section
3826 to the executive director;

3827 (vi) in conjunction with Salt Lake City, expend money to improve or maintain public
3828 property contiguous to East Capitol Boulevard and capitol hill;

3829 (vii) provide wireless Internet service to the public without a fee in any capitol hill
3830 facility; and

3831 (viii) when necessary, consult with the:

3832 (A) Division of Facilities Construction and Management;

3833 (B) State Library Division;

3834 (C) Division of Archives and Records Service;

3835 (D) Division of State History;

3836 (E) Office of Museum Services; and

3837 (F) Arts Council.

3838 (b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall
3839 be discontinued in the legislative area if the president of the Senate and the speaker of the
3840 House of Representatives each submit a signed letter to the board indicating that the service is
3841 disruptive to the legislative process and is to be discontinued.

3842 (c) If a budget subcommittee is established by the board, the following shall serve as ex
3843 officio, nonvoting members of the budget subcommittee:

3844 (i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office
3845 of Legislative Fiscal Analyst; and

3846 (ii) the director of the Governor's Office of Planning and Budget, or the director's
3847 designee, who shall be from the Governor's Office of Planning and Budget.

3848 (d) If a preservation and maintenance subcommittee is established by the board, the
3849 board may, by majority vote, appoint one or each of the following to serve on the
3850 subcommittee as voting members of the subcommittee:

3851 (i) an architect, who shall be selected from a list of three architects submitted by the
3852 American Institute of Architects; or

3853 (ii) an engineer, who shall be selected from a list of three engineers submitted by the
3854 American Civil Engineers Council.

3855 (e) If the board establishes any subcommittees, the board may, by majority vote,
3856 appoint up to two people who are not members of the board to serve, at the will of the board, as
3857 nonvoting members of a subcommittee.

3858 (f) Members of each subcommittee shall, at the first meeting of each calendar year,
3859 select one individual to act as chair of the subcommittee for a one-year term.

3860 (6) (a) The board, and the employees of the board, may not move the office of the
3861 governor, lieutenant governor, president of the Senate, speaker of the House of
3862 Representatives, or a member of the Legislature from the State Capitol unless the removal is

3863 approved by:

3864 (i) the governor, in the case of the governor's office;

3865 (ii) the lieutenant governor, in the case of the lieutenant governor's office;

3866 (iii) the president of the Senate, in the case of the president's office or the office of a

3867 member of the Senate; or

3868 (iv) the speaker of the House of Representatives, in the case of the speaker's office or

3869 the office of a member of the House.

3870 (b) The board and the employees of the board have no control over the furniture,
3871 furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the
3872 members of the Legislature except as necessary to inventory or conserve items of historical
3873 significance owned by the state.

3874 (c) The board and the employees of the board have no control over records and
3875 documents produced by or in the custody of a state agency, official, or employee having an
3876 office in a building on the capitol hill complex.

3877 (d) Except for items identified by the board as having historical significance, and
3878 except as provided in Subsection (6)(b), the board and the employees of the board have no
3879 control over moveable furnishings and equipment in the custody of a state agency, official, or
3880 employee having an office in a building on the capitol hill complex.

3881 Section 75. Section **63C-9-403** is amended to read:

3882 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

3883 (1) For purposes of this section:

3884 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3885 34A-2-104 who:

3886 (i) works at least 30 hours per calendar week; and

3887 (ii) meets employer eligibility waiting requirements for health care insurance which
3888 may not exceed the first of the calendar month following 90 days from the date of hire.

3889 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

3890 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

3891 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

3892 (2) (a) Except as provided in Subsection (3), this section applies to a design or

3893 construction contract entered into by the board or on behalf of the board on or after July 1,

3894 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

3895 (b) (i) A prime contractor is subject to this section if the prime contract is in the

3896 amount of \$1,500,000 or greater.

3897 (ii) A subcontractor is subject to this section if a subcontract is in the amount of

3898 \$750,000 or greater.

3899 (3) This section does not apply if:

3900 (a) the application of this section jeopardizes the receipt of federal funds;

3901 (b) the contract is a sole source contract; or

3902 (c) the contract is an emergency procurement.

3903 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]

3904 63G-6a-103, or a modification to a contract, when the contract does not meet the initial

3905 threshold required by Subsection (2).

3906 (b) A person who intentionally uses change orders or contract modifications to

3907 circumvent the requirements of Subsection (2) is guilty of an infraction.

3908 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive

3909 director that the contractor has and will maintain an offer of qualified health insurance

3910 coverage for the contractor's employees and the employees' dependents during the duration of

3911 the contract.

3912 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor

3913 shall demonstrate to the executive director that the subcontractor has and will maintain an offer

3914 of qualified health insurance coverage for the subcontractor's employees and the employees'

3915 dependents during the duration of the contract.

3916 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during

3917 the duration of the contract is subject to penalties in accordance with administrative rules

3918 adopted by the division under Subsection (6).

3919 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3920 requirements of Subsection (5)(b).

3921 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3922 the duration of the contract is subject to penalties in accordance with administrative rules
3923 adopted by the department under Subsection (6).

3924 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3925 requirements of Subsection (5)(a).

3926 (6) The department shall adopt administrative rules:

3927 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3928 (b) in coordination with:

3929 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

3930 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

3931 (iii) the State Building Board in accordance with Section 63A-5-205;

3932 (iv) a public transit district in accordance with Section 17B-2a-818.5;

3933 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

3934 (vi) the Legislature's Administrative Rules Review Committee; and

3935 (c) which establish:

3936 (i) the requirements and procedures a contractor must follow to demonstrate to the
3937 executive director compliance with this section which shall include:

3938 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

3939 (b) more than twice in any 12-month period; and

3940 (B) that the actuarially equivalent determination required for the qualified health
3941 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
3942 department or division with a written statement of actuarial equivalency from either:

3943 (I) the Utah Insurance Department;

3944 (II) an actuary selected by the contractor or the contractor's insurer; or

3945 (III) an underwriter who is responsible for developing the employer group's premium
3946 rates;

3947 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3948 violates the provisions of this section, which may include:

3949 (A) a three-month suspension of the contractor or subcontractor from entering into
3950 future contracts with the state upon the first violation;

3951 (B) a six-month suspension of the contractor or subcontractor from entering into future
3952 contracts with the state upon the second violation;

3953 (C) an action for debarment of the contractor or subcontractor in accordance with
3954 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

3955 (D) monetary penalties which may not exceed 50% of the amount necessary to
3956 purchase qualified health insurance coverage for employees and dependents of employees of
3957 the contractor or subcontractor who were not offered qualified health insurance coverage
3958 during the duration of the contract; and

3959 (iii) a website on which the department shall post the benchmark for the qualified
3960 health insurance coverage identified in Subsection (1)(c).

3961 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
3962 subcontractor who intentionally violates the provisions of this section shall be liable to the
3963 employee for health care costs that would have been covered by qualified health insurance
3964 coverage.

3965 (ii) An employer has an affirmative defense to a cause of action under Subsection
3966 (7)(a)(i) if:

3967 (A) the employer relied in good faith on a written statement of actuarial equivalency
3968 provided by:

3969 (I) an actuary; or

3970 (II) an underwriter who is responsible for developing the employer group's premium
3971 rates; or

3972 (B) the department determines that compliance with this section is not required under
3973 the provisions of Subsection (3) or (4).

3974 (b) An employee has a private right of action only against the employee's employer to

3975 enforce the provisions of this Subsection (7).

3976 (8) Any penalties imposed and collected under this section shall be deposited into the
3977 Medicaid Restricted Account created in Section 26-18-402.

3978 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3979 coverage as required by this section:

3980 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3981 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
3982 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

3983 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3984 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3985 or construction.

3986 Section 76. Section **63E-2-109** is amended to read:

3987 **63E-2-109. State statutes.**

3988 (1) Except as specifically modified in its authorizing statute, each independent
3989 corporation shall be exempt from the statutes governing state agencies, including:

3990 (a) Title 51, Chapter 5, Funds Consolidation Act;

3991 (b) Title 51, Chapter 7, State Money Management Act;

3992 (c) Title 63A, Utah Administrative Services Code;

3993 (d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3994 (e) Title 63G, Chapter 4, Administrative Procedures Act;

3995 (f) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

3996 (g) Title 63J, Chapter 1, Budgetary Procedures Act;

3997 (h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

3998 (i) Title 67, Chapter 19, Utah Personnel Management Act.

3999 (2) Except as specifically modified in its authorizing statute, each independent
4000 corporation shall be subject to:

4001 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

4002 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

4003 (3) Each independent corporation board may adopt its own policies and procedures
4004 governing its:

- 4005 (a) funds management;
- 4006 (b) audits; and
- 4007 (c) personnel.

4008 Section 77. Section **63F-1-205** is amended to read:

4009 **63F-1-205. Approval of acquisitions of information technology.**

4010 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement
4011 Private Proposal Program, in accordance with Subsection (2), the chief information officer
4012 shall approve the acquisition by an executive branch agency of:

- 4013 (i) information technology equipment;
- 4014 (ii) telecommunications equipment;
- 4015 (iii) software;
- 4016 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 4017 (v) data acquisition.

4018 (b) The chief information officer may negotiate the purchase, lease, or rental of private
4019 or public information technology or telecommunication services or facilities in accordance with
4020 this section.

4021 (c) Where practical, efficient, and economically beneficial, the chief information
4022 officer shall use existing private and public information technology or telecommunication
4023 resources.

4024 (d) Notwithstanding another provision of this section, an acquisition authorized by this
4025 section shall comply with rules made by the [~~State Procurement Policy Board~~] applicable
4026 rulemaking authority under Title 63G, Chapter [6] 6a, Utah Procurement Code.

4027 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
4028 that exceeds the value established by the chief information officer by rule in accordance with
4029 Section 63F-1-206, the chief information officer shall:

- 4030 (a) conduct an analysis of the needs of executive branch agencies and subscribers of

4031 services and the ability of the proposed information technology or telecommunications services
4032 or supplies to meet those needs; and

4033 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
4034 provide in writing to the chief procurement officer in the Division of Purchasing and General
4035 Services that:

4036 (i) the analysis required in Subsection (2)(a) was completed; and

4037 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
4038 services, products, or supplies is practical, efficient, and economically beneficial to the state
4039 and the executive branch agency or subscriber of services.

4040 (3) In approving an acquisition described in Subsections (1) and (2), the chief
4041 information officer shall:

4042 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
4043 under which an agency must obtain approval from the chief information officer before
4044 acquiring the items listed in Subsections (1) and (2);

4045 (b) for those acquisitions requiring approval, determine whether the acquisition is in
4046 compliance with:

4047 (i) the executive branch strategic plan;

4048 (ii) the applicable agency information technology plan;

4049 (iii) the budget for the executive branch agency or department as adopted by the
4050 Legislature; and

4051 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

4052 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
4053 two or more executive branch agencies if it is in the best interests of the state.

4054 (4) (a) Each executive branch agency shall provide the chief information officer with
4055 complete access to all information technology records, documents, and reports:

4056 (i) at the request of the chief information officer; and

4057 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
4058 (1).

(b) Beginning July 1, 2006 and in accordance with administrative rules established by the department under Section 63F-1-206, no new technology projects may be initiated by an executive branch agency or the department unless the technology project is described in a formal project plan and the business case analysis has been approved by the chief information officer and agency head. The project plan and business case analysis required by this Subsection (4) shall be in the form required by the chief information officer, and shall include:

- (i) a statement of work to be done and existing work to be modified or displaced;
- (ii) total cost of system development and conversion effort, including system analysis and programming costs, establishment of master files, testing, documentation, special equipment cost and all other costs, including overhead;
- (iii) savings or added operating costs that will result after conversion;
- (iv) other advantages or reasons that justify the work;
- (v) source of funding of the work, including ongoing costs;
- (vi) consistency with budget submissions and planning components of budgets; and
- (vii) whether the work is within the scope of projects or initiatives envisioned when the current fiscal year budget was approved.

(5) (a) The chief information officer and the Division of Purchasing and General Services shall work cooperatively to establish procedures under which the chief information officer shall monitor and approve acquisitions as provided in this section.

(b) The procedures established under this section shall include at least the written certification required by Subsection [~~63G-6-204(8)~~] 63G-6a-303(5).

Section 78. Section **63G-6a-101**, which is renumbered from Section 63G-6-101 is renumbered and amended to read:

CHAPTER 6a. UTAH PROCUREMENT CODE

Part 1. General Procurement Provisions

~~[63G-6-101].~~ **63G-6a-101.** Title.

(1) This chapter is known as the "Utah Procurement Code."

(2) This part is known as "General Procurement Provisions."

4087 Section 79. Section **63G-6a-102**, which is renumbered from Section 63G-6-102 is
4088 renumbered and amended to read:

4089 ~~[63G-6-102].~~ **63G-6a-102. Purpose of chapter.**

4090 The underlying purposes and policies of this chapter are:

4091 (1) to simplify, clarify, and modernize the law governing procurement by this state;

4092 (2) to ensure the fair and equitable treatment of all persons who deal with the
4093 procurement system of this state;

4094 (3) to provide increased economy in state procurement activities; and

4095 (4) to foster effective broad-based competition within the free enterprise system.

4096 Section 80. Section **63G-6a-103**, which is renumbered from Section 63G-6-103 is
4097 renumbered and amended to read:

4098 ~~[63G-6-103].~~ **63G-6a-103. Definitions.**

4099 As used in this chapter:

4100 (1) "Appeals board" means:

4101 (a) the Procurement Appeals Board created under Subsection 63G-6a-1702(1); or

4102 (b) a board created under Subsection 63G-6a-1702(5).

4103 (2) "Applicable rulemaking authority" means:

4104 (a) as it relates to the state legislative branch, the Legislative Management Committee,

4105 except to the extent that the Legislature passes a rule that supercedes or conflicts with a rule

4106 made by the Legislative Management Committee;

4107 (b) as it relates to the state judicial branch, the Judicial Council;

4108 (c) as it relates to a local public procurement unit, other than a local public

4109 procurement unit described in Subsections (2)(d) through (h), the board; or

4110 (d) as it relates to a municipality or county that adopts this chapter, the legislative body

4111 of the municipality or county, not as a delegation of authority from the Legislature, but under

4112 the municipality's or county's own legislative authority;

4113 (e) as it relates to a school district or a public school, the Procurement Policy Board,

4114 except to the extent that a school district makes its own non-administrative rules, with respect

4115 to a particular subject, that do not conflict with the provisions of this chapter;

4116 (f) as it relates to a state institution of higher education, the State Board of Regents;

4117 (g) as it relates to a public transit district organized under Title 17B, Chapter 2a, Part 8,

4118 Public Transit District Act, the governing board of the public transit district;

4119 (h) as it relates to a local district or a special service district, the board, except to the

4120 extent that the local district or special service district enacts its own rules:

4121 (i) with respect to a subject addressed by board rules; or

4122 (ii) that are in addition to board rules;

4123 (i) as it relates to the following entities, but only to the extent that the rules relate to

4124 procurement authority expressly granted to the entity by statute:

4125 (i) the State Building Board, created in Section 63A-5-101;

4126 (ii) the Division of Facilities Construction and Management created in Section

4127 63A-5-201;

4128 (iii) the attorney general's office; or

4129 (iv) the Department of Transportation, created in Section 72-1-201;

4130 (j) as it relates to the state executive branch and all public procurement units other than

4131 those described in Subsections (2)(a) through (h), the board; or

4132 (k) as it relates to an entity described in Subsection (2)(i), except to the extent that the

4133 rules relate to procurement authority expressly granted to the entity by statute, the board.

4134 [~~(1)~~] (3) "Architect-engineer services" [~~are those~~] means:

4135 (a) professional services within the scope of the practice of architecture as defined in

4136 Section 58-3a-102~~;~~]; or

4137 (b) professional engineering as defined in Section 58-22-102.

4138 [~~(2)~~ "Business" means any corporation, partnership, individual, sole proprietorship,

4139 joint stock company, joint venture, or any other private legal entity.]

4140 (4) "Bidder" means a person who responds to an invitation for bids.

4141 (5) "Board" means the Utah State Procurement Policy Board, created in Section

4142 63G-6a-202.

4143 (6) "Building board" means the State Building Board created in Section 63A-5-101.

4144 ~~[(3)]~~ (7) "Change order" means:

4145 (a) a written order signed by the procurement officer~~[, directing]~~ that directs the
4146 contractor to suspend work or make changes, ~~[which the appropriate clauses of the contract~~
4147 ~~authorize the procurement officer to order]~~ as authorized by contract, without the consent of the
4148 contractor; or ~~[any]~~

4149 (b) a written alteration in specifications, delivery point, rate of delivery, period of
4150 performance, price, quantity, or other provisions of ~~[any contract accomplished by mutual~~
4151 ~~action]~~ a contract, upon mutual agreement of the parties to the contract.

4152 (8) "Chief procurement officer" means the chief procurement officer appointed under
4153 Subsection 63G-6a-302(1).

4154 ~~[(4)]~~ (9) (a) "Construction" means the process of building, ~~[renovation, alteration,~~
4155 ~~improvement, or repair of any]~~ renovating, altering, improving, or repairing a public building
4156 or public work.

4157 (b) "Construction" does not ~~[mean]~~ include the routine operation, routine repair, or
4158 routine maintenance of an existing ~~[structures, buildings]~~ structure, building, or real property.

4159 ~~[(5)]~~ (10) (a) "Construction manager/general contractor" means ~~[any]~~ a contractor who
4160 enters into a contract for the management of a construction project when ~~[that]~~ the contract
4161 allows the contractor to subcontract for additional labor and materials that ~~[were]~~ are not
4162 included in the contractor's cost proposal submitted at the time of the procurement of the
4163 ~~[Construction Manager/General]~~ contractor's services.

4164 (b) "Construction manager/general contractor" does not ~~[mean]~~ include a contractor
4165 whose only subcontract work not included in the contractor's cost proposal submitted as part of
4166 the procurement of ~~[construction]~~ the contractor's services is to meet subcontracted portions of
4167 change orders approved within the scope of the project.

4168 ~~[(6)]~~ (11) "Contract" means ~~[any state]~~ an agreement for the procurement or disposal of
4169 ~~[supplies, services, or construction]~~ a procurement item.

4170 (12) "Contractor" means a person who is awarded a contract with a public procurement

4171 unit.

4172 ~~[(7)]~~ (13) "Cooperative purchasing" means procurement conducted by, or on behalf of,
4173 more than one public procurement unit, or by a public procurement unit ~~[with]~~ and an external
4174 procurement unit.

4175 ~~[(8)]~~ (14) "Cost-reimbursement contract" means a contract under which a contractor is
4176 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
4177 the provisions of this chapter, and a fee, if any.

4178 (15) "Days" means calendar days, unless expressly provided otherwise.

4179 ~~[(9)-(a)]~~ (16) "Design-build" means the procurement of architect-engineer services and
4180 construction by the use of a single contract with the design-build provider.

4181 ~~[(b) This method of design and construction can include the design-build provider~~
4182 ~~supplying the site as part of the contract.]~~

4183 (17) "Director" means the director of the division.

4184 (18) "Division" means the Division of Purchasing and General Services.

4185 ~~[(10)]~~ (19) "Established catalogue price" means the price included in a catalogue, price
4186 list, schedule, or other form that:

4187 (a) is regularly maintained by a manufacturer or contractor;

4188 (b) is either published or otherwise available for inspection by customers; and

4189 (c) states prices at which sales are currently or were last made to a significant number
4190 of any category of buyers or buyers constituting the general buying public for the supplies or
4191 services involved.

4192 ~~[(11) "External procurement unit" means any buying organization not located in this~~
4193 ~~state which, if located in this state, would qualify as a public procurement unit. An agency of~~
4194 ~~the United States is an external procurement unit.]~~

4195 ~~[(12)]~~ (20) (a) "Grant" means ~~[the]~~ furnishing, by ~~[the state]~~ a public entity or by any
4196 other public or private source ~~[assistance, whether financial or otherwise, to any], financial or~~
4197 other assistance to a person to support a program authorized by law. ~~[It]~~

4198 (b) "Grant" does not include;

4199 (i) an award whose primary purpose is to procure an end product[, whether in the form
4200 of supplies, services, or construction. A contract resulting from the award is not a grant but a
4201 procurement contract.] or procurement item; or

4202 (ii) a contract that is awarded as a result of a procurement or a procurement process.

4203 ~~[(13) "Invitation for bids" means all documents, whether attached or incorporated by~~
4204 ~~reference, utilized for soliciting bids.]~~

4205 ~~[(14) "Local public procurement unit" means any political subdivision or institution of~~
4206 ~~higher education of the state or public agency of any subdivision, public authority, educational,~~
4207 ~~health, or other institution, and to the extent provided by law, any other entity which expends~~
4208 ~~public funds for the procurement of supplies, services, and construction, but not counties,~~
4209 ~~municipalities, political subdivisions created by counties or municipalities under the Interlocal~~
4210 ~~Cooperation Act, the Utah Housing Corporation, or the Legislature and its staff offices. It~~
4211 ~~includes two or more local public procurement units acting under legislation which authorizes~~
4212 ~~intergovernmental cooperation.]~~

4213 ~~[(15) "Person" means any business, individual, union, committee, club, other~~
4214 ~~organization, or group of individuals, not including a state agency or a local public~~
4215 ~~procurement unit.]~~

4216 ~~[(16) "Policy board" means the procurement policy board created by Section~~
4217 ~~63G-6-201.]~~

4218 (21) "Head of a public procurement unit" means:

4219 (a) as it relates to the state legislative branch, any person designated by rule made by
4220 the applicable rulemaking authority;

4221 (b) as it relates to the state executive branch:

4222 (i) the director of a division; or

4223 (ii) any other person designated by the board, by rule;

4224 (c) as it relates to the state judicial branch:

4225 (i) the Judicial Council; or

4226 (ii) any other person designated by the Judicial Council, by rule;

- 4227 (d) as it relates to a local public procurement unit, other than a local public
4228 procurement unit described in Subsections (21)(e) through (i):
4229 (i) the appointed or elected head of the local public procurement unit; or
4230 (ii) any other person designated by the board, by rule;
4231 (e) as it relates to a local public procurement unit that is a municipality or a county:
4232 (i) the legislative body of the municipality or county; or
4233 (ii) any other person designated by the municipality or county;
4234 (f) as it relates to a school district or any school or entity within a school district, the
4235 board of the school district, or the board's designee;
4236 (g) as it relates to a charter school, the individual or body with executive authority over
4237 the charter school, or the individual's or body's designee;
4238 (h) as it relates to an institution of higher education of the state, the president of the
4239 institution of higher education, or the president's designee; or
4240 (i) as it relates to a local district or a special service district, the governing body of the
4241 local district or special service district.
4242 (22) "Head of an authorized purchasing entity" means:
4243 (a) as it relates to the division, the chief procurement officer;
4244 (b) to the extent that the entities have express statutory authority to engage in a
4245 procurement without the involvement of the division:
4246 (i) as it relates to the State Building Board, created in Section 63A-5-101, the State
4247 Building Board;
4248 (ii) as it relates to the Division of Facilities Construction and Management created in
4249 Section 63A-5-201, the director of the Division of Facilities Construction and Management;
4250 (iii) as it relates to the attorney general's office, the attorney general;
4251 (iv) as it relates to the Department of Transportation, created in Section 72-1-201, the
4252 executive director of the Department of Transportation; or
4253 (v) as it relates to a district court, a person designated by the Judicial Council, by rule;
4254 (c) as it relates to an institution of higher education of the state, the president of the

4255 institution of higher education of the state;

4256 (d) as it relates to a school district, the board of the school district;

4257 (e) as it relates to a public school, including a local school board, the board of the
4258 school district;

4259 (f) as it relates to a charter school, a person designated by the charter school;

4260 (g) as it relates to a non-executive state procurement unit, a person designated by the
4261 applicable rulemaking authority; or

4262 (h) as it relates to a local district or a special service district, the governing body of the
4263 local district or special service district.

4264 (23) "Invitation for bids" includes all documents, including documents that are attached
4265 or incorporated by reference, used for soliciting bids to provide a procurement item to a public
4266 procurement unit.

4267 (24) "Multiple award contracts" means the award of a contract for an indefinite
4268 quantity of a procurement item to more than one bidder or offeror.

4269 (25) "Multiyear contract" means a contract that extends beyond a one-year period,
4270 including a contract that permits renewal of the contract, without competition, beyond the first
4271 year of the contract.

4272 (26) "Municipality" means a city or a town.

4273 (27) "Offeror" means a person who responds to a request for proposals.

4274 ~~[(17)]~~ (28) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
4275 preference under the requirements of this chapter.

4276 ~~[(18)]~~ (29) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
4277 leasing with an option to purchase, or otherwise acquiring ~~[any supplies, services, or~~
4278 ~~construction. It also]~~ a procurement item.

4279 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of
4280 [any supply, service, or construction] a procurement item, including:

4281 (i) the description of requirements[;];

4282 (ii) the selection[, and] process;

4283 (iii) solicitation of sources[;];

4284 (iv) the preparation[; and] for soliciting a procurement item;

4285 (v) the award of a contract[;]; and

4286 (vi) all phases of contract administration.

4287 ~~[(19) "Procurement officer" means any person or board duly authorized to enter into~~
4288 ~~and administer contracts and make written determinations with respect thereto. It also includes~~
4289 ~~an authorized representative acting within the limits of authority.]~~

4290 ~~[(20) "Public procurement unit" means either a local public procurement unit or a state~~
4291 ~~public procurement unit.]~~

4292 ~~[(21) "Purchase description" means the words used in a solicitation to describe the~~
4293 ~~supplies, services, or construction to be purchased, and includes specifications attached to or~~
4294 ~~made a part of the solicitation.]~~

4295 ~~[(22) "Purchasing agency" means any state agency other than the Division of~~
4296 ~~Purchasing and General Services that is authorized by this chapter or its implementing~~
4297 ~~regulations, or by delegation from the chief procurement officer, to enter into contracts.]~~

4298 ~~[(23) "Request for proposals" means all documents, whether attached or incorporated~~
4299 ~~by reference, used for soliciting proposals.]~~

4300 ~~[(24) "Responsible bidder or offeror" means a person who has the capability in all~~
4301 ~~respects to perform fully the contract requirements and who has the integrity and reliability~~
4302 ~~which will assure good faith performance.]~~

4303 ~~[(25) "Responsive bidder" means a person who has submitted a bid which conforms in~~
4304 ~~all material respects to the invitation for bids.]~~

4305 (30) "Procurement item" means a supply, a service, construction, or technology.

4306 (31) "Procurement officer" means:

4307 (a) as it relates to the state legislative branch, the head of a public procurement unit in
4308 the legislative branch;

4309 (b) as it relates to the state judicial branch, the head of a public procurement unit in the
4310 state judicial branch;

- 4311 (c) as it relates to the state executive branch, the chief procurement officer;
4312 (d) as it relates to a local public procurement unit other than a local public procurement
4313 unit described in Subsection (31)(e) or (f), the chief procurement officer;
4314 (e) as it relates to a municipality or county that adopts this chapter, the legislative body
4315 of the municipality or county; or
4316 (f) as it relates to a state purchasing unit, the head of the state purchasing unit, or a
4317 designee of the head of the state purchasing unit.
4318 (32) "Professional service" means a service that requires a high degree of specialized
4319 knowledge and discretion in the performance of the service, including:
4320 (a) legal services;
4321 (b) consultation services;
4322 (c) architectural services;
4323 (d) engineering;
4324 (e) design;
4325 (f) underwriting;
4326 (g) bond counsel;
4327 (h) financial advice; or
4328 (i) construction management.
4329 (33) "Request for information" means a nonbinding process where a public
4330 procurement unit requests information relating to a procurement item.
4331 (34) "Request for proposals" includes all documents, including documents that are
4332 attached or incorporated by reference, used for soliciting proposals to provide a procurement
4333 item to a public procurement unit.
4334 (35) "Responsible" means that a bidder or offeror:
4335 (i) is capable, in all respects, to fully perform the contract requirements solicited in an
4336 invitation for bids or a request for proposals; and
4337 (ii) has the integrity and reliability to ensure good faith performance.
4338 (36) "Responsive" means that a bidder or offeror submits a response to an invitation for

4339 bids or a request for proposals that conforms in all material respects to the invitation for bids or
4340 request for proposals.

4341 ~~[(26)]~~ (37) "Sealed" ~~[does not preclude acceptance of]~~ means manually or
4342 electronically sealed and submitted bids or proposals ~~[in addition to bids or proposals manually~~
4343 ~~sealed and submitted]~~.

4344 ~~[(27)]~~ (38) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
4345 not involving the delivery of a specific end product other than ~~[reports which are merely]~~ a
4346 report that is incidental to the required performance. ~~[It]~~

4347 (b) "Services" does not include an employment ~~[agreements]~~ agreement or a collective
4348 bargaining ~~[agreements]~~ agreement.

4349 ~~[(28)]~~ (39) "Specification" means any description of the physical or functional
4350 characteristics, or ~~[of the]~~ nature of a ~~[supply, service, technology, or construction item. It may~~
4351 ~~include]~~ procurement item included in an invitation for bids or a request for proposals, or
4352 otherwise specified or agreed to by a public procurement unit, including a description of [any]:

4353 (a) a requirement for inspecting ~~[, testing,]~~ or testing a procurement item; or

4354 (b) preparing a ~~[supply, service, technology, or construction]~~ procurement item for
4355 delivery.

4356 ~~[(29) "State agency" or "the state" means any department, division, commission,~~
4357 ~~council, board, bureau, committee, institution, government corporation, or other establishment,~~
4358 ~~official, or employee of this state.]~~

4359 ~~[(30) "State public procurement unit" means the Division of Purchasing and General~~
4360 ~~Services and any other purchasing agency of this state.]~~

4361 (40) "Standard procurement process" means one of the following methods of obtaining
4362 a procurement item:

4363 (a) bidding, as described in Part 6, Bidding;

4364 (b) request for proposals, as described in Part 7, Request for Proposals; or

4365 (c) small purchases, in accordance with the requirements established under Section
4366 63G-6a-408.

4367 (41) (a) "Subcontractor" means a person under contract with a contractor or another
4368 subcontractor to provide services or labor for design or construction.

4369 (b) "Subcontractor" includes a trade contractor or specialty contractor.

4370 (c) "Subcontractor" does not include a supplier who provides only materials,
4371 equipment, or supplies to a contractor or subcontractor.

4372 ~~[(31)]~~ (42) "Supplies" means all property, including equipment, materials, and printing.

4373 ~~[(32) "Using agency" means any state agency which utilizes any supplies, services, or~~
4374 ~~construction procured under this chapter.]~~

4375 (43) "Tie bid" means that the lowest responsive and responsible bids are identical in
4376 price.

4377 Section 81. Section **63G-6a-104** is enacted to read:

4378 **63G-6a-104. Definitions of government entities.**

4379 As used in this chapter:

4380 (1) "Authorized purchasing entity" means:

4381 (a) a non-executive state procurement unit; or

4382 (b) a state purchasing unit.

4383 (2) "External procurement unit" means:

4384 (a) a buying organization not located in this state which, if located in this state, would
4385 qualify as a public procurement unit; or

4386 (b) an agency of the United States.

4387 (3) "Local government unit" means:

4388 (a) a county;

4389 (b) a municipality;

4390 (c) a political subdivision created by counties or municipalities under Title 11, Chapter
4391 13, Interlocal Cooperation Act; or

4392 (d) the Utah Housing Corporation.

4393 (4) "Local public procurement unit" means:

4394 (a) a local district, as defined in Section 17B-1-102;

- 4395 (b) a special service district, as defined in Section 17D-1-102;
4396 (c) a local building authority, as defined in Section 17D-2-102;
4397 (d) a conservation district, as described in Title 17D, Chapter 3, Conservation District
4398 Act;
4399 (e) a public corporation, other than the Utah Housing Corporation;
4400 (f) a community development and renewal agency;
4401 (g) a school district;
4402 (h) a public school, including a local school board or a charter school;
4403 (i) Utah Schools for the Deaf and Blind;
4404 (j) the Utah Education Network;
4405 (k) an institution of higher education of the state;
4406 (l) a county or municipality, and each office or agency of the county or municipality,
4407 unless the county or municipality adopts its own procurement code by ordinance;
4408 (m) a county or municipality, and each office or agency of the county or municipality,
4409 that has adopted this entire chapter by ordinance;
4410 (n) a county or municipality, and each office or agency of the county or municipality,
4411 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the
4412 adopted portion of this chapter; or
4413 (o) two or more of the entities described in this Subsection (4), acting under legislation
4414 that authorizes intergovernmental cooperation.
4415 (5) "Non-executive state procurement unit" means:
4416 (a) the state legislative branch;
4417 (b) a public procurement unit in the state legislative branch;
4418 (c) the state judicial branch;
4419 (d) a public procurement unit in the state judicial branch; or
4420 (e) a public transit district, organized under Title 17B, Chapter 2a, Part 8, Public
4421 Transit District Act.
4422 (6) "Public entity" means any state or local government entity, located in Utah,

4423 including:

4424 (a) the state legislative branch, including the Legislature and each house, staff office,
4425 committee, subcommittee, or other part of the state legislative branch;

4426 (b) the state executive branch, including the governor's office and each department,
4427 division, agency, office, and bureau in the state executive branch;

4428 (c) the state judicial branch, including the Utah Supreme Court, the Utah Court of
4429 Appeals, the Judicial Council, and each court, office, and other part of the state judicial branch;

4430 (d) a municipality or county, regardless of whether the municipality or county has
4431 adopted this chapter or any part of this chapter;

4432 (e) a public procurement unit; and

4433 (f) any other entity that expends public funds.

4434 (7) (a) "Public procurement unit" means:

4435 (i) the Senate;

4436 (ii) the House of Representatives;

4437 (iii) a staff office of the state legislative branch;

4438 (iv) a state executive branch department, division, office, bureau, or agency;

4439 (v) the Utah State Supreme Court;

4440 (vi) the Judicial Council;

4441 (vii) a state judicial district; or

4442 (viii) a local public procurement unit.

4443 (b) "Public procurement unit" does not include a political subdivision created by
4444 counties or municipalities under Title 11, Chapter 13, Interlocal Cooperation Act.

4445 (8) "State purchasing unit" means:

4446 (a) the division;

4447 (b) the following entities, to the extent that the entities have express statutory authority
4448 to engage in a procurement without the involvement of the division:

4449 (i) the State Building Board, created in Section 63A-5-101;

4450 (ii) the Division of Facilities Construction and Management, created in Section

63A-5-201;

(iii) the attorney general's office;

(iv) the Department of Transportation, created in Section 72-1-201; or

(v) a district court;

(c) an institution of higher education of the state;

(d) a school district;

(e) a public school, including a local school board or a charter school; or

(f) a local public procurement unit.

Section 82. Section **63G-6a-105**, which is renumbered from Section 63G-6-104 is renumbered and amended to read:

[63G-6-104]. 63G-6a-105. Application of chapter.

~~[(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.]~~

(1) The provisions of this chapter that are enacted on July 1, 2012, apply only to a procurement advertised, or begun on or after July 1, 2012, unless the parties agree to have the provisions apply with respect to a procurement that was advertised or begun before July 1, 2012, but is not completed before July 1, 2012.

(2) (a) Except as provided in Section [63G-6-105] 63G-6a-109, this chapter shall apply to every expenditure of public funds irrespective of [their source] the source of the funds, including federal assistance, by any [state agency] public procurement unit, under any contract.

(b) The provisions of this chapter do not apply to a public entity that is not a public procurement unit.

~~[(3) (a) Only the following sections shall apply to local public procurement units: Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422, 63G-6-501 through 63G-6-602, 63G-6-801 through 63G-6-806, and 63G-6-815 through 63G-6-819; provided, however, that, except as provided in Sections 63G-6-906 and 63G-6-907, the jurisdiction of the procurement appeals board is limited to matters involving~~

4479 state agencies.]

4480 ~~[(b) Subsections 63G-6-208(1)(b), 63G-6-504(4), and 63G-6-505(2) also apply to local~~
4481 ~~public procurement units.]~~

4482 ~~[(c) For the purpose of application of those sections and subsections to a local public~~
4483 ~~procurement unit, "state" shall mean "local public procurement unit," "chief procurement~~
4484 ~~officer" or "head of a purchasing agency" shall mean any person conducting procurement for a~~
4485 ~~local public procurement unit, and "rules and regulations" shall mean ordinances and rules and~~
4486 ~~regulations promulgated by a local public procurement unit to implement or supplement those~~
4487 ~~sections.]~~

4488 ~~[(d) In addition to the sections and subsections listed above and except]~~

4489 (3) Except as provided in Subsection 17B-1-108(3) relating to local districts, each local
4490 public procurement unit shall adopt ordinances relating to the procurement of
4491 architect-engineer services not inconsistent with the provisions of Part [7] 15,
4492 Architect-Engineer Services.

4493 ~~[(e)]~~ (4) Any ~~[other]~~ section of this chapter, or its implementing regulations, may be
4494 adopted by any local ~~[public procurement]~~ government unit.

4495 ~~[(f) Any other implementing regulations adopted by local public procurement units~~
4496 ~~may not be inconsistent with the provisions of this chapter.]~~

4497 (5) Rules adopted under this chapter shall be consistent with the provisions of this
4498 chapter.

4499 (6) A state purchasing unit or a public procurement unit may not adopt rules, policies,
4500 or regulations that are inconsistent with this chapter.

4501 ~~[(4)]~~ (7) Unless otherwise provided by statute, this chapter does not apply to
4502 procurement of real property.

4503 Section 83. Section **63G-6a-106**, which is renumbered from Section 63G-6-207 is
4504 renumbered and amended to read:

4505 **~~[63G-6-207].~~ 63G-6a-106. Specific statutory authority -- Limitations on**
4506 **authority of chief procurement officer and division.**

4507 (1) The ~~[authority to procure certain supplies, services, and construction given the~~
4508 ~~public procurement units governed by]~~ procurement authority given to a public procurement
4509 unit under the following provisions shall be retained, and shall be applied only to the extent
4510 described in those provisions:

4511 (a) Title 53B, State System of Higher Education;

4512 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
4513 and Management;

4514 (c) Title 67, Chapter 5, Attorney General;

4515 (d) Title 72, Transportation Code; and

4516 (e) Title 78A, Chapter 5, District Courts.

4517 (2) ~~[This authority extends only to supplies, services, and construction to the extent~~
4518 ~~provided in the cited chapters:]~~ Except as otherwise provided in Sections ~~[63G-6-104 and~~
4519 ~~63G-6-105, the respective purchasing agencies shall procure supplies, services, and~~
4520 ~~construction]~~ 63G-6a-105 and 63G-6a-109, a public procurement unit shall conduct a
4521 procurement in accordance with this chapter.

4522 (3) (a) The Department of Transportation may make rules governing the procurement
4523 of highway construction or improvement.

4524 (b) This Subsection (3) supersedes Subsections (1) and (2).

4525 ~~[(4) The Legislature may procure supplies and services for its own needs.]~~

4526 (4) Except to the extent otherwise agreed to in a memorandum of understanding
4527 between the division and the following entities, the authority of the chief procurement officer
4528 and of the division does not extend to:

4529 (a) a non-executive state procurement unit;

4530 (b) a local government unit; or

4531 (c) a state purchasing unit, other than the division.

4532 (5) An entity described in Subsection (4) or a state purchasing unit, other than the
4533 division, may, without supervision, interference, or involvement by the chief procurement
4534 officer or the division, but consistent with the requirements of this chapter:

- 4535 (a) engage in a procurement process;
4536 (b) procure an item under an exception, as provided in this chapter, to the requirement
4537 to use a procurement process; or
4538 (c) otherwise engage in an act authorized or required by this chapter.
4539 (6) The attorney general may, in accordance with the provisions of this chapter, but
4540 without involvement by the division or the chief procurement officer:
4541 (a) retain outside counsel; or
4542 (b) procure litigation support services, including retaining an expert witness.
4543 (7) A public procurement unit, or a state purchasing unit, that is not represented by the
4544 attorney general's office may, in accordance with the provisions of this chapter, but without
4545 involvement by the division or the chief procurement officer:
4546 (a) retain outside counsel; or
4547 (b) procure litigation support services, including retaining an expert witness.
4548 (8) The state auditor's office may, in accordance with the provisions of this chapter, but
4549 without involvement by the division or the chief procurement officer, procure audit services.
4550 (9) The state treasurer may, in accordance with the provisions of this chapter, but
4551 without involvement by the division or the chief procurement officer, procure:
4552 (a) deposit and investment services; and
4553 (b) services related to issuing bonds.
4554 Section 84. Section **63G-6a-109**, which is renumbered from Section 63G-6-105 is
4555 renumbered and amended to read:
4556 ~~**[63G-6-105].**~~ **63G-6a-109.** Exemptions from chapter -- Compliance with
4557 **federal law.**
4558 (1) ~~[This chapter is]~~ Except for Part 23, Unlawful Conduct and Penalties, the
4559 provisions of this chapter are not applicable to:
4560 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
4561 Act[-];
4562 ~~[(2) This chapter is not applicable to]~~

(b) grants awarded by the state or contracts between the state and a local public procurement ~~[units]~~ unit, except as provided in Part [9] 21, Intergovernmental Relations[:]; or

(c) any action taken by a majority of both houses of the Legislature.

~~[(3)]~~ (2) This chapter ~~[shall]~~ does not prevent the state or a local public procurement unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

~~[(4)]~~ (3) ~~[When]~~ Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal assistance [or], federal contract funds, or federal financial participation funds, the [chief procurement officer or head of a purchasing agency] public procurement unit or state purchasing unit shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

~~[(5)]~~ (4) This chapter ~~[may]~~ does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

Section 85. Section **63G-6a-110** is enacted to read:

63G-6a-110. Procurements under direction and control of division -- Exception.

(1) Except as provided in Subsection (2), a public procurement unit may not engage in a procurement unless:

(a) the procurement is made under the direction and control of the division; or

(b) the division, pursuant to rules made by the board, permits the public procurement unit to make the procurement on its own.

(2) Subsection (1) does not apply to a public procurement unit that is:

(a) a non-executive state procurement unit;

(b) a local government unit; or

(c) a state purchasing unit, other than the division.

Section 86. Section **63G-6a-201** is enacted to read:

Part 2. Procurement Policy Board

63G-6a-201. Title.

4591 This part is known as "Procurement Policy Board."

4592 Section 87. Section **63G-6a-202**, which is renumbered from Section 63G-6-201 is
4593 renumbered and amended to read:

4594 ~~[63G-6-201].~~ **63G-6a-202. Creation of Utah State Procurement Policy**
4595 **Board.**

4596 (1) ~~[(a)]~~ There is created ~~[a state procurement policy board]~~ the Utah State
4597 Procurement Policy Board.

4598 ~~[(b)]~~ (2) The ~~[policy board shall consist of]~~ board consists of up to 10 members as
4599 follows:

4600 ~~[(i)]~~ (a) an employee of a state institution of higher education, appointed by the board
4601 of regents;

4602 ~~[(ii)]~~ (b) an employee of the Department of Human Services, appointed by the
4603 executive director of that department;

4604 ~~[(iii)]~~ (c) an employee of the Department of Transportation, appointed by the executive
4605 director of that department;

4606 ~~[(iv)]~~ (d) an employee of a school district appointed by a cooperative purchasing entity
4607 for school districts;

4608 ~~[(v)]~~ (e) an employee of the Division of Facilities Construction and Management
4609 appointed by the director of that division;

4610 ~~[(vi)]~~ (f) an employee of a county, appointed by the Utah Association of Counties;

4611 ~~[(vii)]~~ (g) an employee of a city, appointed by the Utah League of Cities and Towns;

4612 ~~[(viii)]~~ (h) an employee of a local district or special service district, appointed by the
4613 Utah Association of Special Districts;

4614 ~~[(ix)]~~ (i) the executive director of the Department of Technology Services or the
4615 executive director's designee; and

4616 ~~[(x)]~~ (j) the chief procurement officer or the chief procurement officer's designee.

4617 ~~[(e)]~~ (3) Members of the ~~[policy]~~ board shall be knowledgeable and experienced in,
4618 and have supervisory responsibility for, procurement in their official positions.

4619 ~~[(2)]~~ (4) A board member ~~[shall]~~ may serve as long as the member meets the
4620 description in Subsection ~~[(1)(b)]~~ (2) unless removed by the person or entity ~~[who appointed]~~
4621 with the authority to appoint the board member.

4622 ~~[(3)]~~ (5) (a) The ~~[policy]~~ board shall:

4623 (i) adopt rules of procedure for conducting its business; and

4624 (ii) elect a chair to serve for one year.

4625 (b) The chair of the board shall be selected by a majority of the members of the board
4626 and may be elected to succeeding terms.

4627 (c) The chief procurement officer shall designate an employee of the ~~[Division of~~
4628 ~~Purchasing and General Services]~~ division to serve as the nonvoting secretary to the policy
4629 board.

4630 ~~[(4)]~~ (6) A member of the board may not receive compensation or benefits for the
4631 member's service, but may receive per diem and travel expenses in accordance with:

4632 (a) Section 63A-3-106;

4633 (b) Section 63A-3-107; and

4634 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
4635 63A-3-107.

4636 Section 88. Section **63G-6a-203**, which is renumbered from Section 63G-6-202 is
4637 renumbered and amended to read:

4638 ~~[63G-6-202].~~ **63G-6a-203. Powers and duties of board.**

4639 ~~[(1) Except as otherwise provided in Section 63G-6-104 and Subsection~~
4640 ~~63G-6-208(1)(b), the policy board shall:]~~

4641 ~~[(a) make rules, consistent with this chapter, governing the procurement, management,~~
4642 ~~and control of any and all supplies, services, technology, and construction to be procured by the~~
4643 ~~state; and]~~

4644 ~~[(b)]~~ (1) In addition to making rules in accordance with Section 63G-6a-402 and the
4645 other provisions of this chapter, the board shall consider and decide matters of policy within
4646 the provisions of this chapter, including those referred to it by the chief procurement officer.

4647 (2) (a) The [policy] board may:
4648 (i) audit and monitor the implementation of its rules and the requirements of this
4649 chapter;
4650 (ii) upon the request of a local public procurement unit, review that local public
4651 procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of
4652 this chapter or rules made by the board; and
4653 (iii) approve the use of innovative procurement [~~methods proposed by local public~~
4654 ~~procurement units~~] processes.

4655 (b) The [policy] board may not exercise authority over the award or administration of:

4656 (i) any particular [~~contact~~] contract; or

4657 (ii) [~~over~~] any dispute, claim, or litigation pertaining to any particular contract.

4658 (3) The board does not have authority over a matter involving:

4659 (a) a non-executive state procurement unit;

4660 (b) a local government unit; or

4661 (c) except as otherwise expressly provided in this chapter, a local public procurement
4662 unit.

4663 Section 89. Section **63G-6a-204**, which is renumbered from Section 63G-6-208 is
4664 renumbered and amended to read:

4665 **[~~63G-6-208~~]. 63G-6a-204. Applicability of rules and regulations of Utah**
4666 **State Procurement Policy Board and State Building Board -- Report to interim**
4667 **committee.**

4668 [~~(1) (a) Except as provided in Subsection (2), the policy board shall make rules~~
4669 ~~governing state procurement by complying with the procedures and requirements of Title 63G,~~
4670 ~~Chapter 3, the Utah Administrative Rulemaking Act.]~~

4671 [~~(b) Except for rules made under Subsection (1)(c), the procurement rules adopted by~~
4672 ~~the policy board under this section apply to all local public procurement units unless the local~~
4673 ~~public procurement unit's legislative body has adopted separate rules governing procurement.]~~

4674 [~~(c) The rules shall include provisions consistent with federal contract prohibition~~

provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit a state agency from contracting with a person doing business in Sudan.]

(1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all public procurement units for which the board is the applicable rulemaking authority.

(2) The ~~[State Building Board]~~ building board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

(3) An applicable rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the applicable rulemaking authority has rulemaking authority.

~~[(3)]~~ (4) The board shall make a report ~~[by]~~ on or before July 1 of each year to ~~[an appropriate]~~ a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under ~~[Subsection (1)(c)]~~ Section 63G-6a-203.

Section 90. Section **63G-6a-205**, which is renumbered from Section 63G-6-209 is renumbered and amended to read:

~~[63G-6-209].~~ **63G-6a-205. Procurement advisory councils.**

~~[(1) The policy board may establish a Procurement Advisory Council, which shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by the policy board, the Procurement Advisory Council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the jurisdiction of the policy board. The Procurement Advisory Council shall consist of representatives of state and local government and any other persons the policy board considers desirable.]~~

~~[(2)]~~ The chief procurement officer may appoint advisory ~~[groups]~~ councils to provide advice regarding any matters within the authority of the chief procurement officer.

~~[(3) Members of the Procurement Advisory Council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, as provided by the policy board.]~~

Section 91. Section **63G-6a-301** is enacted to read:

Part 3. Chief Procurement Officer

63G-6a-301. Title.

This part is known as "Chief Procurement Officer."

Section 92. Section **63G-6a-302**, which is renumbered from Section 63G-6-203 is renumbered and amended to read:

**[63G-6-203]. 63G-6a-302. Chief procurement officer -- Appointment --
Qualifications -- Authority.**

(1) The executive director of the Department of Administrative Services, with the consent of the governor, shall appoint the chief procurement officer after considering recommendations from the ~~[policy]~~ board.

(2) The chief procurement officer shall:

(a) have a minimum of eight years' experience in the large-scale procurement of supplies and services or services and construction, at least five years of which shall have been in public or comparable private procurement within 12 years preceding the date of appointment; and

(b) be a person with demonstrated executive and organizational ability.

(3) The chief procurement officer appointed under Subsection (1) is also the director of the Division of Purchasing and General Services.

(4) Except as otherwise expressly provided in this chapter, the chief procurement officer has authority over procurements by a public procurement unit, other than:

(a) a non-executive procurement unit;

(b) a local government unit; or

(c) a state purchasing unit, other than the division.

Section 93. Section **63G-6a-303**, which is renumbered from Section 63G-6-204 is

4731 renumbered and amended to read:

4732 ~~[63G-6-204].~~ **63G-6a-303. Duties of chief procurement officer.**

4733 Except as otherwise specifically provided in this chapter, the chief procurement officer
4734 serves as the central procurement officer of the state and shall:

4735 (1) adopt office policies governing the internal functions of the ~~[Division of Purchasing~~
4736 ~~and General Services]~~ division;

4737 (2) procure or supervise ~~[the]~~ each procurement ~~[of all supplies, services, and~~
4738 ~~construction needed by the state]~~ over which the chief procurement officer has authority;

4739 ~~[(3) exercise general supervision and control over all inventories or supplies belonging~~
4740 ~~to the state;]~~

4741 ~~[(4)]~~ (3) establish and maintain programs for the inspection, testing, and acceptance of
4742 ~~[supplies, services, and construction]~~ each procurement item over which the chief procurement
4743 officer has authority;

4744 ~~[(5)]~~ (4) prepare statistical data concerning ~~[the procurement and usage of all supplies,~~
4745 ~~services, and construction]~~ each procurement and procurement usage of a state procurement
4746 unit;

4747 ~~[(6) before June 1, 1990, notify all public procurement units of the requirements of~~
4748 ~~Section 63G-6-406 regarding purchases of recycled paper and recycled paper products,~~
4749 ~~recycling requirements, and provide guidelines on the availability of recycled paper and paper~~
4750 ~~products, including the sources of supply and the potential uses of various grades of recycled~~
4751 ~~paper;]~~

4752 ~~[(7) before July 1, 1992:]~~

4753 ~~[(a) establish standards and specifications for determining which supplies are~~
4754 ~~considered recycled, based upon the chief procurement officer's review of current definitions~~
4755 ~~and standards employed by national procurement, product recycling, and other relevant~~
4756 ~~organizations and the federal Environmental Protection Agency;]~~

4757 ~~[(b) compile and update as necessary the specifications, a list of recycled supplies~~
4758 ~~available on state contract, and sources where the supplies may be obtained;]~~

4759 ~~[(c) make the compiled information under Subsection (7)(b) available to:]~~
4760 ~~[(i) all local government entities under Section 11-37-101;]~~
4761 ~~[(ii) all local health departments under Section 26A-1-108.7;]~~
4762 ~~[(iii) all procurement officers or other persons responsible for purchasing supplies~~
4763 ~~within the public school system under Title 53A, State System of Public Education;]~~
4764 ~~[(iv) all procurement officers or other persons responsible for purchasing supplies~~
4765 ~~within the state system of higher education under Title 53B, State System of Higher Education;~~
4766 ~~and]~~
4767 ~~[(v) all procurement officers or other persons responsible for purchasing supplies for~~
4768 ~~all public procurement units as defined in Section 63G-6-103; and]~~
4769 ~~[(d) present a written report to the Natural Resources, Agriculture, and Environment~~
4770 ~~Interim Committee annually prior to November 30 regarding the purchases of recycled goods~~
4771 ~~on state contracts during the prior fiscal year; and]~~
4772 ~~[(8)]~~ (5) ensure that:
4773 (a) before approving a ~~[purchase, lease, or rental]~~ procurement not covered by an
4774 existing statewide contract for information technology or telecommunications supplies or
4775 services, the chief information officer and the agency have ~~[provided]~~ stated in writing to the
4776 division~~;~~ that the needs analysis required in Section 63F-1-205 was completed, unless the
4777 ~~[purchase, lease, or rental]~~ procurement is approved in accordance with Title 63M, Chapter 1,
4778 Part 26, Government Procurement Private Proposal Program; and
4779 (b) the oversight authority required by Subsection ~~[(8)]~~(5)(a) is not delegated outside
4780 the ~~[Division of Purchasing and General Services:]~~ division; and
4781 (6) provide training to public procurement units and to persons who do business with
4782 public procurement units.
4783 Section 94. Section **63G-6a-304**, which is renumbered from Section 63G-6-205 is
4784 renumbered and amended to read:
4785 **[63G-6-205]. 63G-6a-304. Delegation of authority.**
4786 ~~[Subject to rules and regulations]~~

(1) In accordance with rules made by the board, the chief procurement officer may delegate authority to designees or to any department, agency, or official.

(2) For a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, any delegation by the chief procurement officer under this section shall be made to the Governor's Office of Economic Development.

Section 95. Section **63G-6a-305**, which is renumbered from Section 63G-6-302 is renumbered and amended to read:

~~[63G-6-302].~~ **63G-6a-305. Duty of chief procurement officer in maintaining specifications.**

(1) The chief procurement officer [~~shall~~] may prepare, issue, revise, maintain, and monitor the use of specifications for [~~supplies, services, construction, and technology required by the state~~] each procurement over which the chief procurement officer has authority.

(2) The chief procurement officer shall obtain expert advice and assistance from personnel of [~~using agencies~~] public procurement units in the development of specifications and may delegate in writing to a [~~using agency~~] public procurement unit the authority to prepare and utilize its own specifications.

(3) For a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, any delegation by the chief procurement officer under this section shall be made to the Governor's Office of Economic Development.

Section 96. Section **63G-6a-401** is enacted to read:

Part 4. General Procurement Provisions

63G-6a-401. Title.

This part is known as "General Procurement Provisions."

Section 97. Section **63G-6a-402** is enacted to read:

63G-6a-402. Public procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.

(1) Except as otherwise provided in Section 63G-6a-109, Section 63G-6a-403, Part 8, Exceptions to Procurement Requirements, or elsewhere in this chapter, a public procurement

4815 unit may not obtain a procurement item, unless:

4816 (a) if the public procurement unit is an authorized purchasing entity, the public
4817 procurement unit:

4818 (i) uses a procurement process; and

4819 (ii) complies with:

4820 (A) the requirements of this chapter; and

4821 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

4822 (b) except as provided in Subsection (2)(a), if the public procurement unit is a local
4823 government unit, the public procurement unit complies with:

4824 (i) the requirements of this chapter that are adopted by the local government unit; and

4825 (ii) all other procurement requirements that the local government unit is required to
4826 comply with; or

4827 (c) if the public procurement unit is not a public procurement unit described in
4828 Subsections (1)(a) or (b), the public procurement unit:

4829 (i) obtains the procurement item under the direction and approval of the division,
4830 unless otherwise provided by a rule made by the board;

4831 (ii) uses a procurement process; and

4832 (iii) complies with:

4833 (A) the requirements of this chapter; and

4834 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

4835 (2) (a) Subsection (1)(b) does not apply to a political subdivision created by counties or
4836 municipalities under Title 11, Chapter 13, Interlocal Cooperation Act, if the political
4837 subdivision does not receive or expend tax revenue.

4838 (b) Subject to Subsection (3), the applicable rulemaking authority shall make rules
4839 relating to the management and control of procurements and procurement procedures by a
4840 public procurement unit.

4841 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal
4842 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.

4843 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

4844 (b) The State Building Board rules governing procurement of construction,
4845 architect-engineer services, and leases apply to the procurement of construction,
4846 architect-engineer services, and leases of real property by the Division of Facilities
4847 Construction and Management.

4848 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah
4849 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance
4850 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4851 (5) The State Building Board shall make a report on or before July 1 of each year to a
4852 legislative interim committee, designated by the Legislative Management Committee created
4853 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
4854 made by the State Building Board under this chapter.

4855 Section 98. Section **63G-6a-403** is enacted to read:

4856 **63G-6a-403. Prequalification of potential bidders or offerers.**

4857 (1) A public procurement unit may, in accordance with this section:

4858 (a) prequalify potential bidders or offerors to provide any type of procurement item
4859 specified by the public procurement unit; and

4860 (b) limit participation in an invitation for bids or a request for proposals to the
4861 prequalified potential bidders or offerors for the specified type of procurement item.

4862 (2) To prequalify potential bidders or offerors to provide a specified type of
4863 procurement item, a public procurement unit shall issue a request for qualifications.

4864 (3) A public procurement unit that issues a request for qualifications shall:

4865 (a) publish the request for qualifications in accordance with the requirements of
4866 Section 63G-6a-402;

4867 (b) state in the request for qualifications:

4868 (i) the type of procurement item to which the request for qualifications relates;

4869 (ii) the scope of work to be performed;

4870 (iii) the instructions and the deadline for providing information in response to the

4871 request for qualifications;

4872 (iv) the minimum criteria for prequalification;

4873 (v) the period of time during which the list of prequalified potential bidders or offerors
4874 will remain in effect, which may not be longer than 18 months after the list of prequalified
4875 potential bidders or offerors is made available to the public under Subsection (8)(b); and

4876 (vi) that a public procurement unit may limit participation in an invitation for bids or a
4877 request for proposals, during the time period described in Subsection (3)(b)(v), to the potential
4878 bidders or offerors that are prequalified to provide the specified type of procurement item.

4879 (4) The minimum criteria described in Subsection (3)(b)(iv):

4880 (a) shall include the prequalification requirements unique to the procurement;

4881 (b) may include performance rating criteria; and

4882 (c) may not be so restrictive that the criteria unreasonably limit competition.

4883 (5) A public procurement unit may, before making a final list of prequalified bidders or
4884 offerors, request additional information to clarify responses made to the request for
4885 prequalifications.

4886 (6) A potential bidder or offeror shall be included on the list of prequalified potential
4887 bidders or offerors if the bidder or offeror:

4888 (a) submits a timely, responsive response to the request for prequalifications; and

4889 (b) meets the minimum criteria for qualification described in Subsection (3)(b)(iv).

4890 (7) If a request for qualifications will result in only one potential bidder or offeror
4891 being placed on the list of prequalified potential bidders or offerors:

4892 (a) the public procurement unit shall cancel the request for qualifications; and

4893 (b) the list may not be used by the public procurement unit.

4894 (8) The public procurement unit shall:

4895 (a) before making the list of prequalified potential bidders or offerors available to the
4896 public, provide each potential bidder or offeror who provided information in response to the
4897 request, but who did not meet the minimum qualifications for placement on the list, a written
4898 justification statement describing why the potential bidder or offeror did not meet the criteria

4899 for inclusion on the list; and

4900 (b) within 30 days after the day of the deadline described in Subsection (3)(b)(iii),
4901 make the list of prequalified potential bidders or offerors available to the public.

4902 Section 99. Section **63G-6a-404** is enacted to read:

4903 **63G-6a-404. Approved contractor list.**

4904 (1) An authorized purchasing entity may compile a list of approved contractors from
4905 which procurement items may be obtained.

4906 (2) An approved contractor list may only be compiled from:

4907 (a) timely, responsive bids or responses received in response to:

4908 (i) an invitation for bids; or

4909 (ii) a request for proposals; or

4910 (b) timely, responsive responses to:

4911 (i) the prequalification process described in Section 63G-6a-403; or

4912 (ii) the process described in Part 15, Architect-Engineer Services.

4913 (3) In order to ensure equal treatment of all contractors on a contractor list, an
4914 authorized purchasing entity shall use one of the following methods in an unbiased manner:

4915 (a) a rotation system, organized alphabetically, numerically, or randomly;

4916 (b) assigning contractors to a specified geographical area; or

4917 (c) classifying each contractor based on each contractor's particular expertise or field.

4918 Section 100. Section **63G-6a-405** is enacted to read:

4919 **63G-6a-405. Multiple award contracts.**

4920 (1) An authorized purchasing entity may enter into multiple award contracts with
4921 bidders or offerors.

4922 (2) Multiple award contracts may be in an authorized purchasing entity's best interest if
4923 award to two or more bidders or offerors for similar procurement items is needed or desired for
4924 adequate delivery, service, availability, or product compatibility.

4925 (3) An authorized purchasing entity shall:

4926 (a) exercise care to protect and promote competition among bidders or offerors when

4927 seeking to enter into multiple award contracts;

4928 (b) name all eligible users of the multiple award contracts in the invitation for bids or
4929 request for proposals; and

4930 (c) if the authorized purchasing entity anticipates entering into multiple award
4931 contracts before issuing the invitation for bids or request for proposals, state in the invitation
4932 for bids or request for proposals that the authorized purchasing entity may enter into multiple
4933 award contracts at the end of the procurement process.

4934 (4) An authorized purchasing entity that enters into multiple award contracts shall:

4935 (a) obtain all of its normal, recurring requirements for the procurement items that are
4936 the subject of the contracts until the contracts terminate; and

4937 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)
4938 separately from the contracts if:

4939 (i) there is a need to obtain a quantity of the procurement items that exceeds the
4940 amount specified in the contracts; or

4941 (ii) the procurement officer makes a written finding that the procurement items
4942 available under the contract will not effectively or efficiently meet a nonrecurring special need
4943 of a public procurement unit.

4944 (5) Notwithstanding Subsection (3)(b), if an authorized purchasing entity enters into a
4945 multiple award contract under this section, another authorized purchasing entity that is not a
4946 signatory to the contract may, but is not required to, obtain a procurement item under the
4947 contract.

4948 (6) An applicable rulemaking authority may make rules to further regulate a
4949 procurement under this section.

4950 Section 101. Section **63G-6a-406** is enacted to read:

4951 **63G-6a-406. Public notice of procurement process.**

4952 (1) An authorized purchasing entity that issues an invitation for bids, a request for
4953 proposals, or another document required by this chapter to be published in accordance with this
4954 section, shall provide public notice that includes:

4955 (a) the name of the authorized purchasing entity and the public procurement unit
4956 acquiring the procurement item;

4957 (b) information on how to contact the authorized purchasing entity in relation to the
4958 invitation for bids, request for proposals, or other document;

4959 (c) for an invitation for bids or a request for proposals, the date of the opening and
4960 closing of the invitation for bids or request for proposals;

4961 (d) information on how to obtain a copy of the invitation for bids, request for
4962 proposals, or other document; and

4963 (e) a general description of the procurement items that will be obtained through the
4964 procurement process.

4965 (2) Except as provided in Subsection (3), the authorized purchasing entity shall publish
4966 the notice described in Subsection (1), using at least one of the following methods:

4967 (a) at least 10 days before the day of the deadline for submission of a bid or other
4968 response, publish the notice:

4969 (i) in a newspaper of general circulation in the state; or

4970 (ii) in a newspaper of local circulation in the area:

4971 (A) directly impacted by the procurement; or

4972 (B) over which the public procurement unit has jurisdiction; or

4973 (b) at least 10 consecutive days before the day of the deadline for submission of a bid
4974 or other response, publish the notice:

4975 (i) on the main website for the authorized purchasing entity or public procurement unit;

4976 or

4977 (ii) on a state website that is owned, managed by, or provided under contract with, the
4978 division for posting a public procurement notice.

4979 (3) An authorized purchasing entity may reduce the 10-day period described in
4980 Subsection (2), if the procurement officer or the procurement officer's designee signs a written
4981 statement that:

4982 (a) states that a shorter time is needed; and

(b) as it relates to an invitation for bids or a request for proposals, determines that competition from multiple sources may be obtained within the shorter period of time.

(4) An authorized purchasing entity shall make a copy of an invitation for bids, a request for proposals, or any other document described in Subsection (1), available for public inspection at the main office of the authorized purchasing entity or on the website described in Subsection (2)(b).

Section 102. Section **63G-6a-407**, which is renumbered from Section 63G-6-303 is renumbered and amended to read:

[63G-6-303]. 63G-6a-407. Purpose of specifications.

(1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the [state's] needs of the public procurement unit, and [shall] may not be unduly restrictive.

(2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including~~[-but not limited to,]~~ those prepared by architects, engineers, designers, and draftsmen for public contracts.

Section 103. Section **63G-6a-408** is enacted to read:

63G-6a-408. Small purchases.

(1) The applicable rulemaking authority may make rules governing small purchases, including:

(a) establishing the maximum expenditure that may qualify as a small purchase, unless otherwise provided by statute;

(b) establishing expenditure thresholds and procurement requirements related to those thresholds; and

(c) the use of electronic, telephone, or written quotes.

(2) (a) Except as provided in Subsection (2)(b), a public procurement unit may not obtain a procurement item through a small purchase procurement process if the procurement item may be obtained through a state contract.

(b) Subsection (2)(a) does not apply:

- 5011 (i) to a non-executive state procurement unit;
5012 (ii) if the procurement officer or the head of the state purchasing unit authorizes an
5013 exception to the requirement; or
5014 (iii) to a local public procurement unit.
5015 (c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged,
5016 but not required, to comply with Subsection (2)(a).
5017 (3) (a) Except as provided in Subsection (3)(b), a public procurement unit:
5018 (i) may not use the small purchase procurement process described in this section for
5019 ongoing, continuous, and regularly scheduled procurements; and
5020 (ii) shall make its ongoing, continuous, and regularly scheduled procurements through
5021 a contract awarded through a procurement process described in this chapter or an applicable
5022 exception to a procurement process.
5023 (b) Subsection (3)(a) does not apply to an ongoing, continuous, or regularly scheduled
5024 procurement to the extent that the total expenditures for the procurement during a fiscal year do
5025 not exceed the maximum expenditure that the public procurement unit is permitted to make
5026 under this section, as established by rule made by the applicable rulemaking authority.
5027 (4) It is unlawful for a person to intentionally or knowingly divide a procurement into
5028 one or more smaller procurements with the intent to make a procurement:
5029 (a) qualify as a small purchase, if, before dividing the procurement, it would not have
5030 qualified as a small purchase; or
5031 (b) meet a threshold established by rule made by the applicable rulemaking authority,
5032 if, before dividing the procurement, it would not have met the threshold.
5033 (5) A division of a procurement that is prohibited under Subsection (4) includes doing
5034 any of the following with the intent or knowledge described in Subsection (4):
5035 (a) making two or more separate purchases;
5036 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;
5037 or
5038 (c) making smaller purchases over a period of time.

(6) A person who violates Subsection (4) is subject to the criminal penalties described in Section 63G-6a-2305.

(7) The Division of Finance within the Department of Administrative Services may conduct an audit of a public procurement unit in the state executive branch to verify compliance with the requirements of this section.

(8) A public procurement unit in the state executive branch may not make a small purchase after January 1, 2013, unless the chief procurement officer certifies that the person responsible for procurements in the public procurement unit has satisfactorily completed training on this section and the rules made under this section.

Section 104. Section **63G-6a-501** is enacted to read:

Part 5. Request for Information

63G-6a-501. Title.

This part is known as "Request for Information."

Section 105. Section **63G-6a-502** is enacted to read:

63G-6a-502. Purpose of request for information.

(1) The purpose of a request for information is to:

(a) obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals;

(b) determine whether to issue an invitation for bids or a request for proposals; and

(c) generate interest in a potential invitation for bids or a request for proposals.

(2) A request for information may be useful in order to:

(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or complex procurement;

(b) determine the market availability of a procurement item; or

(c) determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.

Section 106. Section **63G-6a-503** is enacted to read:

63G-6a-503. Request for information and response nonbinding.

(1) A request for information is not a procurement process and may not be used to make a purchase or enter into a contract. A public procurement unit is required to use a procurement process, or comply with an exception to the requirement to use a procurement process, in order to make a purchase or enter into a contract.

(2) A response to a request for information is not an offer and may not be accepted to form a binding contract.

Section 107. Section **63G-6a-504** is enacted to read:

63G-6a-504. Contents of request for information.

A request for information may seek a wide range of information, including:

(1) availability of a procurement item;

(2) delivery schedules;

(3) industry standards and practices;

(4) product specifications;

(5) training;

(6) new technologies;

(7) capabilities of potential providers of a procurement item; and

(8) alternate solutions.

Section 108. Section **63G-6a-601** is enacted to read:

Part 6. Bidding

63G-6a-601. Title.

This part is known as "Bidding."

Section 109. Section **63G-6a-602** is enacted to read:

63G-6a-602. Contracts awarded by bidding.

(1) Except as otherwise provided in this chapter, an authorized purchasing entity shall award a contract for a procurement by bidding, in accordance with the rules of the applicable rulemaking authority.

(2) The bidding procurement process is appropriate to use when cost is the major factor in determining the award of a procurement.

5095 Section 110. Section **63G-6a-603** is enacted to read:

5096 **63G-6a-603. Invitation for bids -- Contents -- Notice.**

5097 (1) The bidding procurement process begins when the authorized purchasing entity
5098 issues an invitation for bids.

5099 (2) An invitation for bids shall:

5100 (a) state the period of time during which bids will be accepted;

5101 (b) describe the manner in which a bid shall be submitted;

5102 (c) state the place where a bid shall be submitted; and

5103 (d) include, or incorporate by reference:

5104 (i) a description of the procurement items sought;

5105 (ii) the objective criteria that will be used to evaluate the bids; and

5106 (iii) the required contractual terms and conditions.

5107 (3) An authorized purchasing entity shall publish an invitation for bids in accordance
5108 with the requirements of Section 63G-6a-406.

5109 Section 111. Section **63G-6a-604** is enacted to read:

5110 **63G-6a-604. Bid opening and acceptance.**

5111 (1) Bids shall be opened:

5112 (a) publicly, except as provided in Section 63G-6a-611;

5113 (b) in the presence of one or more witnesses, unless an electronic bid opening process
5114 is used where bidders may see the opening of the bid electronically; and

5115 (c) at the time and place indicated in the invitation for bids.

5116 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
5117 otherwise authorized by this chapter.

5118 (3) (a) The procurement officer shall reject a bid that is not responsive or responsible.

5119 (b) A bid that is not responsive includes a bid that:

5120 (i) is conditional;

5121 (ii) attempts to modify the bid requirements;

5122 (iii) contains additional terms or conditions; or

5123 (iv) fails to conform with the requirements or specifications of the invitation for bids.

5124 (c) A bid that is not responsible includes a bid where the procurement officer
5125 reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at
5126 any tier, is unable to satisfactorily fulfill the bid requirements.

5127 (4) An authorized purchasing entity may not accept a bid after the time for submission
5128 of a bid has expired.

5129 (5) The procurement officer shall:

5130 (a) record the name of each bidder and the amount of each bid; and

5131 (b) after the bid is awarded, make the information described in Subsection (5)(a)
5132 available for public disclosure.

5133 Section 112. Section **63G-6a-605** is enacted to read:

5134 **63G-6a-605. Correction or withdrawal of bids -- Cancellation of award.**

5135 (1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an
5136 award or a contract that is based on an unintentionally erroneous bid, may be made in
5137 accordance with the rules of the applicable rulemaking authority.

5138 (2) Notwithstanding Subsection (1), the following changes may not be made to a bid
5139 after the bid opening:

5140 (a) changes in bid pricing;

5141 (b) changes in the cost evaluation formula; or

5142 (c) changes in other provisions that are prejudicial to fair competition or to the interest
5143 of the public procurement unit.

5144 (3) A decision to permit the correction or withdrawal of a bid or the cancellation of an
5145 award or a contract under Subsection (1) shall be supported in a written document, signed by
5146 the procurement officer or the head of the authorized purchasing entity.

5147 Section 113. Section **63G-6a-606** is enacted to read:

5148 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

5149 (1) An authorized purchasing entity shall evaluate each bid using the objective criteria
5150 described in the invitation for bids, which may include:

- 5151 (a) experience;
5152 (b) performance ratings;
5153 (c) inspection;
5154 (d) testing;
5155 (e) quality;
5156 (f) workmanship;
5157 (g) time and manner of delivery;
5158 (h) references;
5159 (i) financial stability;
5160 (j) cost;
5161 (k) suitability for a particular purpose; or
5162 (l) other objective criteria specified in the invitation for bids.
5163 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
5164 (3) The authorized purchasing entity shall:
5165 (a) award the contract as soon as practicable to:
5166 (i) the lowest responsive and responsible bidder who meets the objective criteria
5167 described in the invitation for bids; or
5168 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
5169 authorized purchasing entity disqualifies the bidder described in Subsection (3)(a)(i), the next
5170 lowest responsive and responsible bidder who meets the objective criteria described in the
5171 invitation for bids; or
5172 (b) cancel the invitation for bids without awarding a contract.
5173 (4) In accordance with Subsection (5), the procurement officer or the head of the
5174 authorized purchasing entity may disqualify a bidder for:
5175 (a) a violation of this chapter;
5176 (b) a violation of a requirement of the invitation for bids;
5177 (c) unlawful or unethical conduct; or
5178 (d) a change in circumstance that, had the change been known at the time the bid was

5179 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
5180 who meets the objective criteria described in the invitation for bids.

5181 (5) A procurement officer or head of an authorized purchasing entity who disqualifies a
5182 bidder under Subsection (4) shall:

5183 (a) make a written finding, stating the reasons for disqualification; and

5184 (b) provide a copy of the written finding to the disqualified bidder.

5185 (6) If an authorized purchasing entity cancels an invitation for bids without awarding a
5186 contract, the authorized purchasing entity shall make available for public inspection a written
5187 justification for the cancellation.

5188 Section 114. Section **63G-6a-607** is enacted to read:

5189 **63G-6a-607. Action when all bids are over budget.**

5190 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the public
5191 procurement unit certifies that all accepted bids exceed available funds and that the lowest
5192 responsive and responsible bidder does not exceed the available funds by more than 5%, the
5193 procurement officer may negotiate an adjustment of the bid price and bid requirements with the
5194 lowest responsive and responsible bidder in order to bring the bid within the amount of
5195 available funds.

5196 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
5197 there is a substantial likelihood that, had the adjustment been included in the invitation for
5198 bids, a person that did not submit a bid would have submitted a responsive, responsible, and
5199 competitive bid.

5200 (3) The Division of Facilities Construction and Management is exempt from the
5201 requirements of this section if:

5202 (a) the building board adopts rules governing procedures when all accepted bids exceed
5203 available funds; and

5204 (b) the Division of Facilities Construction and Management complies with the rules
5205 described in Subsection (3)(a).

5206 Section 115. Section **63G-6a-608** is enacted to read:

5207 **63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

5208 (1) A procurement officer shall resolve a tie bid in accordance with a method
5209 established by rule made by the applicable rulemaking authority. The method may include
5210 awarding the tie bid:

5211 (a) to the tie bidder who:

5212 (i) is provider of state products, if no other tie bidder is a responsive provider of state
5213 products;

5214 (ii) is closest to the point of delivery;

5215 (iii) received the previous award; or

5216 (iv) will provide the earliest delivery date;

5217 (b) by drawing lots; or

5218 (c) by any other reasonable method of resolving a tie bid.

5219 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the
5220 sole discretion of the procurement officer, subject to the rules established under Subsection (1).

5221 (3) A public procurement unit in the state executive branch shall provide a copy of the
5222 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000
5223 in expenditures.

5224 Section 116. Section **63G-6a-609** is enacted to read:

5225 **63G-6a-609. Multiple stage bidding process.**

5226 (1) An authorized purchasing entity may conduct a bid in multiple stages, to:

5227 (a) narrow the number of bidders who will progress to a subsequent stage;

5228 (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;

5229 (c) enter into a contract for a single procurement; or

5230 (d) award multiple contracts for a series of upcoming procurements.

5231 (2) The invitation for bids for a multiple stage bidding process shall:

5232 (a) describe the requirements for, and purpose of, each stage of the process;

5233 (b) indicate whether the authorized purchasing entity intends to award:

5234 (i) a single contract; or

5235 (ii) multiple contracts for a series of upcoming procurements; and
5236 (c) state that:
5237 (i) the first stage is for prequalification only;
5238 (ii) a bidder may not submit any pricing information in the first stage of the process;
5239 and
5240 (iii) bids in the second stage will only be accepted from a person who prequalifies in
5241 the first stage.
5242 (3) During the first stage, the authorized purchasing entity:
5243 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
5244 Section 63G-6a-403;
5245 (b) shall prohibit the submission of pricing information until the final stage; and
5246 (c) may, before beginning the second stage, request additional information to clarify
5247 the qualifications of the bidders who submit timely responses.
5248 (4) Contracts may only be awarded for a procurement item described in stage one of
5249 the invitation for bids.
5250 (5) An authorized purchasing entity may conduct a bid in as many stages as it
5251 determines to be appropriate.
5252 (6) Except as otherwise expressly provided in this section, an authorized purchasing
5253 entity shall conduct a multiple stage process in accordance with this part.
5254 (7) The applicable rulemaking authority may make rules governing the use of a
5255 multiple stage process described in this section.
5256 Section 117. Section **63G-6a-610** is enacted to read:
5257 **63G-6a-610. Contracts awarded by reverse auction.**
5258 (1) Reverse auction bidding may be used if the procurement officer determines, in
5259 writing, that reverse auction bidding will provide the best value to the public procurement unit.
5260 (2) Reverse auction bidding is appropriate to use when there are multiple prequalified
5261 providers of a procurement item.
5262 Section 118. Section **63G-6a-611** is enacted to read:

5263 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**

5264 **Agreement to terms and conditions.**

5265 (1) The reverse auction bidding process begins when an authorized purchasing entity
5266 issues an invitation for bids to prequalify bidders to participate in the reverse auction.

5267 (2) The invitation for bids shall:

5268 (a) state the period of time during which bids will be accepted;

5269 (b) state that the bid will be conducted by reverse auction;

5270 (c) describe the procurement items sought;

5271 (d) describe the minimum requirements to become prequalified;

5272 (e) state the required contractual terms and conditions; and

5273 (f) describe the procedure that the authorized purchasing entity will follow in
5274 conducting the reverse auction.

5275 (3) In order to participate in a reverse auction, a bidder shall agree to:

5276 (a) the specifications, and contractual terms and conditions, of the procurement; and

5277 (b) be trained in, and abide by, the procedure that the authorized purchasing entity will
5278 follow in conducting the reverse auction.

5279 (4) An authorized purchasing entity shall publish an invitation for bids for a reverse
5280 auction in accordance with the requirements of Section 63G-6a-406.

5281 Section 119. Section **63G-6a-612** is enacted to read:

5282 **63G-6a-612. Conduct of reverse auction.**

5283 (1) When conducting a reverse auction, an authorized purchasing entity:

5284 (a) may conduct the reverse auction at a physical location or by electronic means;

5285 (b) shall permit all prequalified bidders to participate in the reverse auction;

5286 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
5287 prequalify to participate in the reverse auction;

5288 (d) may not accept a bid after the time for submission of a bid has expired;

5289 (e) shall update the bids on a real time basis; and

5290 (f) shall conduct the reverse auction in a manner that permits each bidder to:

5291 (i) bid against each other; and
5292 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.
5293 (2) At the end of the reverse auction, the authorized purchasing entity shall:
5294 (a) award the contract as soon as practicable to the lowest responsive and responsible
5295 bidder who meets the objective criteria described in the invitation for bids; or
5296 (b) cancel the reverse auction without awarding a contract.
5297 (3) After the reverse auction is finished, the procurement officer shall make publicly
5298 available:
5299 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
5300 and
5301 (ii) the identity of the bidder that submitted each final bid; and
5302 (b) if practicable:
5303 (i) the amount of each bid submitted during the reverse auction; and
5304 (ii) the identity of the bidder that submitted each bid.
5305 Section 120. Section **63G-6a-701** is enacted to read:
5306 **Part 7. Request for Proposals**
5307 **63G-6a-701. Title.**
5308 This part is known as "Request for Proposals."
5309 Section 121. Section **63G-6a-702** is enacted to read:
5310 **63G-6a-702. Contracts awarded by request for proposals.**
5311 (1) A request for proposals procurement process may be used instead of bidding if the
5312 procurement officer determines, in writing, that the request for proposals procurement process
5313 will provide the best value to the public procurement unit.
5314 (2) The request for proposals procurement process is appropriate to use for:
5315 (a) the procurement of professional services;
5316 (b) a design-build procurement;
5317 (c) when cost is not the most important factor to be considered in making the selection
5318 that is most advantageous to the public procurement unit; or

5319 (d) when factors, in addition to cost, are highly significant in making the selection that
5320 is most advantageous to the public procurement unit.

5321 Section 122. Section **63G-6a-703** is enacted to read:

5322 **63G-6a-703. Request for proposals -- Notice -- Contents.**

5323 (1) The request for proposals procurement process begins when the authorized
5324 purchasing entity issues a request for proposals.

5325 (2) A request for proposals shall:

5326 (a) state the period of time during which a proposal will be accepted;

5327 (b) describe the manner in which a proposal shall be submitted;

5328 (c) state the place where a proposal shall be submitted;

5329 (d) include, or incorporate by reference:

5330 (i) a description of the procurement items sought;

5331 (ii) a description of the subjective and objective criteria that will be used to evaluate
5332 the proposal; and

5333 (iii) the standard contractual terms and conditions required by the authorized
5334 purchasing entity;

5335 (e) state the relative weight that will be given to each score awarded for the criteria
5336 described in Subsection (2)(d)(ii), including cost;

5337 (f) state the formula that will be used to determine the score awarded for the cost of
5338 each proposal;

5339 (g) if the request for proposals will be conducted in multiple stages, as described in
5340 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be
5341 used to screen offerors at each stage; and

5342 (h) state that discussions may be conducted with offerors who submit proposals
5343 determined to be reasonably susceptible of being selected for award, followed by an
5344 opportunity to make best and final offers, but that proposals may be accepted without
5345 discussions.

5346 (3) An authorized purchasing entity shall publish a request for proposals in accordance

5347 with the requirements of Section 63G-6a-406.

5348 Section 123. Section **63G-6a-704** is enacted to read:

5349 **63G-6a-704. Opening of proposals and acceptance.**

5350 (1) An authorized purchasing entity shall ensure that proposals are opened in a manner
5351 that avoids disclosing the contents to competing offerors during the evaluation process.

5352 (2) An authorized purchasing entity may not accept a proposal:

5353 (a) after the time for submission of a proposal has expired; or

5354 (b) that is not responsive to the request for proposals.

5355 Section 124. Section **63G-6a-705** is enacted to read:

5356 **63G-6a-705. Discussions -- Best and final offers.**

5357 (1) After proposals are received and opened, the authorized purchasing entity may
5358 conduct discussions with the offerors and allow the offerors to make best and final offers after
5359 the discussions.

5360 (2) The authorized purchasing entity shall:

5361 (a) ensure that each offeror receives fair and equal treatment with respect to the other
5362 offerors;

5363 (b) establish a schedule and procedures for conducting discussions;

5364 (c) ensure that information in each proposal and information gathered during
5365 discussions is not shared with other offerors until the contract is awarded;

5366 (d) ensure that auction tactics are not used in the discussion process, including
5367 discussing and comparing the costs and features of other proposals; and

5368 (e) set a common date and time for the submission of best and final offers.

5369 (3) If an offeror chooses not to participate in a discussion or does not make a timely
5370 best and final offer, the offer submitted by the offerors before the conduct of discussions shall
5371 be treated as the offeror's best and final offer.

5372 Section 125. Section **63G-6a-706** is enacted to read:

5373 **63G-6a-706. Correction or withdrawal of proposal -- Cancellation of award.**

5374 (1) Correction or withdrawal of an unintentionally erroneous proposal, or the

5375 cancellation of an award or contract that is based on an unintentionally erroneous proposal,
5376 may be made in accordance with the rules of the applicable rulemaking authority.

5377 (2) A decision to permit the correction or withdrawal of a proposal or the cancellation
5378 of an award or a contract under Subsection (1) shall be supported in a written document, signed
5379 by the procurement officer.

5380 Section 126. Section **63G-6a-707** is enacted to read:

5381 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

5382 (1) Each proposal shall be evaluated using the criteria described in the request for
5383 proposals, which may include:

5384 (a) experience;

5385 (b) performance ratings;

5386 (c) inspection;

5387 (d) testing;

5388 (e) quality;

5389 (f) workmanship;

5390 (g) time, manner, or schedule of delivery;

5391 (h) references;

5392 (i) financial stability;

5393 (j) suitability for a particular purpose;

5394 (k) management plans;

5395 (l) cost; or

5396 (m) other subjective or objective criteria specified in the request for proposals.

5397 (2) Criteria not described in the request for proposals may not be used to evaluate a
5398 proposal.

5399 (3) The authorized purchasing entity shall:

5400 (a) appoint an evaluation committee consisting of at least three individuals at least one
5401 of which is a representative of the user agency; and

5402 (b) ensure that the evaluation committee and each member of the evaluation

5403 committee:

5404 (i) does not have a conflict of interest with any of the offerors;

5405 (ii) can fairly evaluate each proposal;

5406 (iii) does not contact or communicate with an offeror for any reason other than

5407 conducting the procurement process; and

5408 (iv) conducts the evaluation in a manner that ensures a fair and competitive process

5409 and avoids the appearance of impropriety.

5410 (4) The evaluation committee may conduct interviews with, or participate in

5411 presentations by, the offerors.

5412 (5) Except as provided in Subsection (6) or (7), each member of the evaluation

5413 committee is prohibited from knowing, or having access to, any information relating to the

5414 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its

5415 final recommended scores on all other criteria to the authorized purchasing entity.

5416 (6) (a) As used in this Subsection (6), "management fee" includes only the following

5417 fees of the construction manager/general contractor:

5418 (i) preconstruction phase services;

5419 (ii) monthly supervision fees for the construction phase; and

5420 (iii) overhead and profit for the construction phase.

5421 (b) When selecting a construction manager/general contractor for a construction

5422 project, the evaluation committee:

5423 (i) may, at any time after the opening of the responses to the request for proposals, have

5424 access to, and consider, the management fee proposed by the offerors; and

5425 (ii) except as provided in Subsection (7), may not know or have access to any other

5426 information relating to the cost of construction submitted by the offerors, until after the

5427 evaluation committee submits its final recommended scores on all other criteria to the

5428 authorized purchasing entity.

5429 (7) An authorized purchasing entity is not required to comply with Subsection (5) if,

5430 before opening the responses to the request for proposals, the head of the authorized purchasing

5431 entity or a person designated by rule made by the applicable rulemaking authority:

5432 (a) signs a written statement:

5433 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
5434 best interest of the state to waive compliance with Subsection (5); and

5435 (ii) describing the nature of the proposal and the other circumstances relied upon to
5436 wave compliance with Subsection (5); and

5437 (b) makes the written statement available to the public, upon request.

5438 Section 127. Section **63G-6a-708** is enacted to read:

5439 **63G-6a-708. Publication of award and scores -- Cost-benefit analysis.**

5440 (1) The authorized purchasing entity shall, on the day on which the selection is
5441 announced, make available to each offeror and to the public a written statement that includes:

5442 (a) the name of the offeror found by the authorized purchasing entity to provide the
5443 greatest overall value to the public procurement unit, taking into account the cost and the other
5444 evaluation criteria described in the request for proposals; and

5445 (b) the scores awarded to each offeror by the evaluation committee for each evaluation
5446 criteria category described in the request for proposals.

5447 (2) If the contract is awarded to an offeror other than the lowest cost offeror, and the
5448 difference between the cost of the accepted proposal and the lowest proposal exceeds the
5449 greater of \$10,000 or 5% of the lowest cost offer, an authorized purchasing entity shall include,
5450 with the statement described in Subsection (1), an informal written cost-benefit analysis that:

5451 (a) explains, in general terms, the advantage to the public procurement unit of
5452 awarding the contract to the higher cost offeror;

5453 (b) includes, except as provided in Subsection (2)(c), the estimated added financial
5454 value to the public procurement unit of each criteria that justifies awarding the contract to the
5455 higher cost offeror;

5456 (c) includes, to the extent that assigning a financial value to a particular criteria is not
5457 practicable, a statement describing:

5458 (i) why it is not practicable to assign a financial value to the criteria; and

(ii) in nonfinancial terms, the advantage to the public procurement unit, based on the particular criteria, of awarding the contract to the higher cost offeror;

(d) demonstrates that the value of the advantage to the public procurement unit of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost offeror and the cost of the lower cost offerors; and

(e) includes any other information required by rule made by the applicable rulemaking authority.

Section 128. Section **63G-6a-709** is enacted to read:

63G-6a-709. Award of contract -- Cancellation -- Disqualification.

(1) After the evaluation and scoring of proposals is completed, the authorized purchasing entity shall:

(a) award the contract as soon as practicable to:

(i) the responsive and responsible offeror with the highest total score; or

(ii) if, in accordance with Subsection (2), the procurement officer or the head of the authorized purchasing entity disqualifies the offeror described in Subsection (1)(a)(i), the responsive and responsible offeror with the next highest total score; or

(b) cancel the request for proposals without awarding a contract.

(2) In accordance with Subsection (3), the procurement officer or the head of the authorized purchasing entity may disqualify an offeror for:

(a) a violation of this chapter;

(b) a violation of a requirement of the request for proposals;

(c) unlawful or unethical conduct; or

(d) a change in circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score.

(3) A procurement officer or head of an authorized purchasing entity who disqualifies an offeror under Subsection (2) shall:

(a) make a written finding, stating the reasons for disqualification; and

(b) provide a copy of the written finding to the disqualified offeror.

(4) If an authorized purchasing entity cancels a request for proposals without awarding a contract, the authorized purchasing entity shall make available for public inspection a written justification for the cancellation.

Section 129. Section **63G-6a-710** is enacted to read:

63G-6a-710. Multiple stage process.

(1) An authorized purchasing entity may conduct a request for proposals in stages, where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages.

(2) Except as otherwise expressly provided in this section, an authorized purchasing entity shall conduct a multiple stage process in accordance with this part.

Section 130. Section **63G-6a-711**, which is renumbered from Section 63G-6-408.5 is renumbered and amended to read:

~~[63G-6-408.5].~~ **63G-6a-711. Procurement for submitted proposal.**

(1) As used in this section:

(a) "Committee" is as defined in Section 63M-1-2602.

(b) "Initial proposal" is a proposal submitted by a private entity under Section 63M-1-2605.

(2) After receipt by the chief procurement officer of a copy of an initial proposal from the committee in accordance with Subsection 63M-1-2606(5), including any comment, suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a procurement process in compliance with ~~[Title 63G, Chapter 6, Utah Procurement Code]~~ this chapter.

(3) The chief procurement officer or designee shall:

(a) review each detailed proposal received in accordance with Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

(b) submit all detailed proposals that meet the guidelines established under Subsection 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

(4) For purposes of this chapter, the Governor's Office of Economic Development is

5515 considered the state purchasing [agency] unit for a procurement process under Title 63M,
5516 Chapter 1, Part 26, Government Procurement Private Proposal Program.

5517 Section 131. Section **63G-6a-801** is enacted to read:

5518 **Part 8. Exceptions to Procurement Requirements**

5519 **63G-6a-801. Title.**

5520 This part is known as "Exceptions to Procurement Requirements."

5521 Section 132. Section **63G-6a-802**, which is renumbered from Section 63G-6-410 is
5522 renumbered and amended to read:

5523 **[63G-6-410]. 63G-6a-802. Sole source -- Award of contract without**
5524 **competition -- Notice.**

5525 (1) As used in this section:

5526 (a) "Transitional costs" mean the costs of changing from an existing provider of, or
5527 type of, a procurement item to another provider of, or type of, procurement item.

5528 (b) "Transitional costs" include:

5529 (i) training costs;

5530 (ii) conversion costs;

5531 (iii) compatibility costs;

5532 (iv) system downtime;

5533 (v) disruption of service;

5534 (vi) staff time necessary to put the transition into effect;

5535 (vii) installation costs; and

5536 (viii) ancillary software, hardware, equipment, or construction costs.

5537 (c) "Transitional costs" do not include:

5538 (i) the costs of preparing for or engaging in a procurement process; or

5539 (ii) contract negotiation or contract drafting costs.

5540 (2) A contract may be awarded for a [supply, service, or construction] procurement
5541 item without competition [when, under rules and regulations, the chief] if the procurement
5542 officer, the head of [a purchasing agency, or a designee of either officer above the level of

5543 ~~procurement officer]~~ an authorized purchasing entity, or a designee of either who is senior to
5544 the procurement officer or the head of the authorized purchasing entity, determines in writing
5545 that:

5546 ~~[(1)]~~ (a) there is only one source for the ~~[required supply, service, or construction]~~
5547 procurement item; or

5548 ~~[(2)]~~ (b) the award to a specific supplier, service provider, or contractor is a condition
5549 of a donation that will fund the full cost of the supply, service, or construction item.

5550 (3) Circumstances under which there is only one source for a procurement item may
5551 include:

5552 (a) where the most important consideration in obtaining a procurement item is the
5553 compatibility of equipment, technology, software, accessories, replacement parts, or service;

5554 (b) where a procurement item is needed for trial use or testing;

5555 (c) where transitional costs are unreasonable or cost prohibitive; or

5556 (d) procurement of public utility services.

5557 (4) The applicable rulemaking authority shall make rules regarding the publication of
5558 notice for a sole source procurement that, at a minimum, require publication of notice of a sole
5559 source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement
5560 exceeds \$50,000.

5561 (5) An authorized purchasing entity who awards a sole source contract on behalf of a
5562 public procurement unit shall negotiate with the contractor to ensure that the terms of the
5563 contract, including price and delivery, are in the best interest of the state.

5564 (6) A public procurement unit may extend a contract for a reasonable period of time
5565 without engaging in a procurement process, if:

5566 (a) the award of a new contract for the procurement item is delayed due to a protest or
5567 appeal;

5568 (b) the procurement process is delayed due to unintentional error;

5569 (c) changes in industry standards require significant changes to specifications for the
5570 procurement item;

5571 (d) the extension is necessary to prevent the loss of federal funds;

5572 (e) the extension is necessary to address a circumstance where the appropriation of
5573 state or federal funds has been delayed; or

5574 (f) the extension covers the period of time during which contract negotiations with a
5575 new provider are being conducted.

5576 Section 133. Section **63G-6a-803** is enacted to read:

5577 **63G-6a-803. Emergency procurement.**

5578 (1) Notwithstanding any other provision of this chapter, a procurement officer or the
5579 procurement officer's designee may authorize an emergency procurement without using a
5580 standard procurement process when an emergency condition exists.

5581 (2) A procurement officer who authorizes an emergency procurement under Subsection
5582 (1) shall:

5583 (a) make the authorization in writing, stating the emergency condition upon which the
5584 emergency procurement is made; and

5585 (b) ensure that the procurement is made with as much competition as reasonably
5586 practicable while avoiding harm, or a risk of harm, to the public health, safety, welfare, or
5587 property.

5588 Section 134. Section **63G-6a-804**, which is renumbered from Section 63G-6-423 is
5589 renumbered and amended to read:

5590 ~~**[63G-6-423].**~~ **63G-6a-804. Purchase of prison industry goods.**

5591 (1) [A] (a) A public procurement [units] unit that is not a political subdivision shall
5592 purchase goods and services produced by the Utah Correctional Industries Division as provided
5593 [by] in this section[; which is an exemption from this chapter. All political subdivisions].

5594 (b) A political subdivision of the state may, and is encouraged to, purchase [these]
5595 goods and services [and are encouraged to do so when feasible] under this section.

5596 (c) A public procurement unit is not required to use a procurement process to purchase
5597 goods or services under this section.

5598 (2) [B] On or before July 1 of each year, the director of the Utah Correctional

5599 Industries shall:

5600 (a) publish and distribute to all [~~state agencies and interested political subdivisions~~]
5601 public procurement units and other interested public entities a catalog of goods and services
5602 provided by the Correctional Industries Division[~~-. The catalog shall include~~], including a
5603 description and price of each item offered for sale[~~-. The catalog shall be updated and revised~~];
5604 and

5605 (b) update and revise the catalog described in Subsection (2)(a) during the year as the
5606 director considers necessary.

5607 (3) (a) [~~State departments, agencies, and institutions~~] A procurement unit that is not a
5608 political subdivision of the state may not purchase any goods or services provided by the
5609 Correctional Industries Division from any other source unless it has been determined in writing
5610 by the director of Correctional Industries and by the [~~state~~] procurement officer or in the case
5611 of institutions of higher education, the institutional procurement officer, that purchase from the
5612 Correctional Industries Division is not feasible due to one of the following circumstances:

5613 (i) the good or service offered by the division does not meet the reasonable
5614 requirements of the [~~purchasing agency~~] public procurement unit;

5615 (ii) the good or service cannot be supplied within a reasonable time by the division; or

5616 (iii) the cost of the good or service, including basic price, transportation costs, and
5617 other expenses of acquisition, is not competitive with the cost of procuring the item from
5618 another source.

5619 (b) In cases of disagreement[;] under Subsection (3)(a):

5620 (i) the decision may be appealed to a board consisting of:

5621 (A) the director of the Department of Corrections[;];

5622 (B) the director of Administrative Services[;]; and

5623 (C) a neutral third party agreed upon by the other two members [~~or~~]; of the board;

5624 (ii) in the case of [~~institutions~~] an institution of higher education of the state, the
5625 president of the [~~involved~~] institution, or the president's designee, shall make the final
5626 decision[;]; or

5627 (iii) in the case of a non-executive state procurement unit, a person designated by the
5628 applicable rulemaking authority shall make the final decision.

5629 Section 135. Section **63G-6a-805**, which is renumbered from Section 63G-6-425 is
5630 renumbered and amended to read:

5631 ~~[63G-6-425].~~ **63G-6a-805. Purchase from community rehabilitation**
5632 **programs.**

5633 (1) As used in this section:

5634 (a) [~~"Board"~~] "Advisory board" means the Purchasing from Persons with Disabilities
5635 Advisory Board created under this section.

5636 (b) "Central not-for-profit association" means a group of experts designated by the
5637 advisory board to do the following, under guidelines established by the advisory board:

5638 (i) assist the advisory board with its functions; and

5639 (ii) facilitate the implementation of advisory board policies.

5640 (c) (i) "Community rehabilitation program" means a program that is operated primarily
5641 for the purpose of the employment and training of persons with a disability by a government
5642 agency or qualified nonprofit organization which is an income tax exempt organization under
5643 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

5644 (ii) A community rehabilitation program:

5645 (A) maintains an employment ratio of at least 75% of the program employees under the
5646 procurement contract in question have severe disabilities;

5647 (B) (I) complies with any applicable occupational health and safety standards
5648 prescribed by the United States Department of Labor; or

5649 (II) is a supported employment program approved by the Utah State Office of
5650 Rehabilitation;

5651 (C) has its principal place of business in Utah;

5652 (D) produces any good provided under this section in Utah; and

5653 (E) provides any service that is provided by individuals with a majority of whom
5654 domiciled in Utah.

5655 (d) "Person with a disability" means a person with any disability as defined by and
5656 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

5657 (2) ~~[(a)]~~ There is created within the division the Purchasing from Persons with
5658 Disabilities Advisory Board ~~[within the Division of Purchasing and General Services of the~~
5659 ~~Department of Administrative Services. The board shall be composed of the following three~~
5660 ~~members:]~~.

5661 (3) The advisory board shall consist of three members, as follows:

5662 ~~[(i)]~~ (a) the director of the ~~[Division of Purchasing and General Services created under~~
5663 ~~Section 63A-2-101 or a]~~ division or the director's designee;

5664 ~~[(ii)]~~ (b) the executive director of the Utah State Office of Rehabilitation, created under
5665 Section 53A-24-103, or ~~[a]~~ the executive director's designee; and

5666 ~~[(iii)]~~ (c) a representative of the private business community who shall be appointed to
5667 a three-year term by the governor with the advice and consent of the Senate.

5668 ~~[(b)]~~ (4) The advisory board shall meet, as needed, to facilitate the procurement of
5669 goods and services from community rehabilitation programs by a public procurement unit
5670 under this chapter by:

5671 ~~[(i)]~~ (a) identifying goods and services that are available from community rehabilitation
5672 programs ~~[according to the requirements under Subsection (4)]~~ in accordance with the
5673 requirements of Subsection (7);

5674 ~~[(ii)]~~ (b) approving prices in accordance with Subsection ~~[(4)]~~ (7)(c) for goods and
5675 services that are identified under Subsection ~~[(2)(b)(i)]~~ (4)(a);

5676 ~~[(iii)]~~ (c) developing, maintaining, and approving a preferred procurement contract list
5677 of goods and services identified and priced under Subsections ~~[(2)(b)(i) and (ii)]~~ (4)(a) and (b);

5678 ~~[(iv)]~~ (d) reviewing bids received by a community rehabilitation program; and

5679 ~~[(v)]~~ (e) awarding and renewing specified contracts for set contract times, without
5680 competitive bidding, for the purchase of goods and services under Subsection ~~[(4)]~~ (7).

5681 ~~[(e)]~~ (5) The provisions of Subsections ~~[(2)(b)]~~ (4) and ~~[(4)]~~ (7)(a) are an exception to
5682 the procurement provisions under this chapter.

5683 ~~[(3)]~~ (6) (a) The advisory board may designate a central not-for-profit association,
5684 appoint its members, and establish guidelines for its duties.

5685 (b) The designated central not-for-profit association serves at the pleasure of the
5686 advisory board ~~[and the]~~. The central not-for-profit association or its individual members may
5687 be removed by the advisory board at any time by a majority vote of the advisory board.

5688 (c) Subject to the advisory board guidelines and discretion, a designated central
5689 not-for-profit association may be assigned to perform the following duties:

5690 (i) identify qualified community rehabilitation programs and the goods and services
5691 that they provide or have the potential to provide;

5692 (ii) help ensure that goods and services are provided at reasonable quality and delivery
5693 levels;

5694 (iii) recommend pricing for goods and services;

5695 (iv) ~~[reviewing]~~ review bids and ~~[recommending]~~ recommend the award of contracts
5696 under the advisory board's direction;

5697 (v) ~~[collecting and reporting]~~ collect and report program data to the advisory board and
5698 to the division; and

5699 (vi) other duties specified by the advisory board.

5700 ~~[(4)]~~ (7) Except as provided under Subsection ~~[(6)]~~ (9), notwithstanding any provision
5701 ~~[in]~~ of this chapter to the contrary, each public procurement unit shall purchase goods and
5702 services produced by a community rehabilitation program using the preferred procurement
5703 contract list approved under Subsection ~~[(2)(b)(iii)]~~ (4)(c) if:

5704 (a) the good or service offered for sale by a community rehabilitation program
5705 reasonably conforms to the needs and specifications of the public procurement unit;

5706 (b) the community rehabilitation program can supply the good or service within a
5707 reasonable time; and

5708 (c) the price of the good or service is reasonably competitive with the cost of procuring
5709 the good or service from another source.

5710 ~~[(5)]~~ (8) Each community rehabilitation program:

5711 (a) may submit a bid to the advisory board at any time and not necessarily in response
5712 to ~~[a request]~~ an invitation for bids; and

5713 (b) shall certify on any bid it submits to the advisory board or to a public procurement
5714 unit under this section that it is claiming a preference under this section.

5715 ~~[(6)]~~ (9) During a fiscal year, the requirement for a public procurement unit to purchase
5716 goods and services produced by a community rehabilitation program under the preferred
5717 procurement list under Subsection ~~[(4)]~~ (7) does not apply if the ~~[Division of Purchasing and~~
5718 ~~General Services]~~ division determines that the total amount of procurement contracts with
5719 community rehabilitation programs has reached \$5 million for that fiscal year.

5720 ~~[(7)]~~ (10) In the case of conflict between a purchase under this section and a purchase
5721 under Section ~~[63G-6-423]~~ 63G-6a-804, this section prevails.

5722 Section 136. Section **63G-6a-901** is enacted to read:

5723 **Part 9. Cancellations, Rejections, and Debarment**

5724 **63G-6a-901. Title.**

5725 This part is known as "Cancellations, Rejections, and Debarment."

5726 Section 137. Section **63G-6a-902**, which is renumbered from Section 63G-6-412 is
5727 renumbered and amended to read:

5728 ~~[63G-6-412].~~ **63G-6a-902. Cancellation and rejection of bids and**
5729 **proposals.**

5730 ~~[An]~~ (1) An authorized purchasing entity may cancel an invitation for bids, a request
5731 for proposals, or other solicitation ~~[may be cancelled, or any or all bids or proposals may be~~
5732 ~~rejected]~~ or reject any or all bids or proposal responses, in whole or in part, as may be specified
5733 in the solicitation, when it is in the best interests of the ~~[state]~~ public procurement unit in
5734 accordance with ~~[rules and regulations]~~ the rules of the applicable rulemaking authority.

5735 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be
5736 made part of the contract file.

5737 Section 138. Section **63G-6a-903**, which is renumbered from Section 63G-6-413 is
5738 renumbered and amended to read:

5739 ~~[63G-6-413].~~ **63G-6a-903.** Determination of nonresponsibility of bidder or
5740 offeror.

5741 (1) A ~~[written]~~ determination of nonresponsibility of a bidder or offeror made by an
5742 authorized purchasing entity shall be made in writing, in accordance with ~~[rules and~~
5743 ~~regulations]~~ the rules of the applicable rulemaking authority.

5744 (2) The unreasonable failure of a bidder or offeror to promptly supply information in
5745 connection with an inquiry with respect to responsibility may be grounds for a determination of
5746 nonresponsibility with respect to the bidder or offeror. ~~[Information]~~

5747 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management
5748 Act, information furnished by a bidder or offeror pursuant to this section ~~[shall]~~ may not be
5749 disclosed outside of the ~~[purchasing division or the purchasing agency]~~ public procurement
5750 unit or authorized purchasing entity without prior written consent by the bidder or offeror.

5751 Section 139. Section **63G-6a-904**, which is renumbered from Section 63G-6-804 is
5752 renumbered and amended to read:

5753 ~~[63G-6-804].~~ **63G-6a-904.** Debarment from consideration for award of
5754 contracts -- Causes for debarment.

5755 (1) After reasonable notice to the person involved and reasonable opportunity for that
5756 person to be heard, ~~[the chief procurement officer or the head of a purchasing agency,]~~ a
5757 procurement officer or the head of an authorized purchasing entity may, after consultation with
5758 the ~~[using agency and]~~ public procurement unit and, if the public procurement unit is in the
5759 state executive branch, the attorney general~~[, shall have authority to]:~~

5760 (a) debar a person for cause from consideration for award of contracts~~[. The debarment~~
5761 ~~shall not be for a period exceeding three years. The same officer, after consultation with the~~
5762 ~~using agency and the attorney general, shall have authority to]~~ for a period not to exceed three
5763 years; or

5764 (b) suspend a person from consideration for award of contracts if there is probable
5765 cause to believe that the person has engaged in any activity ~~[which]~~ that might lead to
5766 debarment. ~~[The suspension shall]~~

(2) A suspension described in Subsection (1)(b) may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection ~~[(2)]~~ (3), in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.

~~[(2)]~~ (3) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of ~~[such]~~ a public or private contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract;
~~[or]~~

(e) a violation of this chapter, including Part 22, Ethical Requirements; or

~~[(e)]~~ (f) any other cause the ~~[chief]~~ procurement officer, or the head of ~~[a purchasing agency]~~ an authorized purchasing entity determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity ~~[for any cause listed in rules and regulations]~~.

Section 140. Section **63G-6a-1001** is enacted to read:

Part 10. Preferences

63G-6a-1001. Title.

This part is known as "Preferences."

Section 141. Section **63G-6a-1002**, which is renumbered from Section 63G-6-404 is renumbered and amended to read:

~~[63G-6-404].~~ **63G-6a-1002. Reciprocal preference for providers of state products.**

(1) (a) ~~[All public procurement units shall, in all purchases of goods, supplies, equipment, materials, and printing]~~ An authorized purchasing entity shall, for all procurements, give a reciprocal preference to those bidders offering [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in Utah [as against] over those bidders offering [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular ~~[good, supply, equipment, material, or printing]~~ procurement item.

(c) ~~[(i) The]~~ In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the [goods, supplies, equipment, materials, or printing] procurement items offered are produced, manufactured, mined, grown, or performed in Utah.

~~[(ii)]~~ (d) The reciprocal preference is waived if ~~[that]~~ the certification described in Subsection (1)(c) does not appear on the bid.

(2) (a) If the bidder submitting the lowest responsive and responsible bid offers ~~[goods, supplies, equipment, materials, or printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering [goods, supplies, equipment, materials, or printing] procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, [his] the bid of the other bidder is equal to or less than the original lowest bid, the [procurement officer] authorized purchasing entity shall:

(i) give notice to the bidder offering ~~[goods, supplies, equipment, materials, or printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if[;] the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

(b) The [~~procurement officer~~] authorized purchasing entity shall include the exact price submitted by the lowest bidder in the notice the [~~procurement officer~~] authorized purchasing entity submits to the preferred bidder.

(c) The [~~procurement officer~~] authorized purchasing entity may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3) (a) If there is more than one preferred bidder, the [~~procurement officer~~] authorized purchasing entity shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the [~~procurement officer~~] authorized purchasing entity shall comply with the rules [~~adopted by the Procurement Policy Board~~] of the applicable rulemaking authority to determine which bidder should be awarded the contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 142. Section **63G-6a-1003**, which is renumbered from Section 63G-6-405 is renumbered and amended to read:

~~[63G-6-405].~~ **63G-6a-1003. Preference for resident contractors.**

(1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2) (a) When awarding contracts for construction, [~~a public procurement unit~~] an authorized purchasing entity shall grant a resident contractor a reciprocal preference [~~as~~

5851 ~~against~~] over a nonresident contractor from any state that gives or requires a preference to
5852 contractors from that state.

5853 (b) The amount of the reciprocal preference shall be equal to the amount of the
5854 preference applied by the state of the nonresident contractor.

5855 (3) (a) ~~[The]~~ In order to receive the reciprocal preference under this section, the bidder
5856 shall certify on the bid that the bidder qualifies as a resident contractor.

5857 (b) The reciprocal preference is waived if ~~[that]~~ the certification described in
5858 Subsection (2)(a) does not appear on the bid.

5859 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a
5860 resident contractor ~~[and has his]~~ whose principal place of business ~~[in any]~~ is in a state that
5861 gives or requires a preference to contractors from that state, and if a resident contractor has also
5862 submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference,
5863 the resident contractor's bid is equal to or less than the original lowest bid, the ~~[procurement~~
5864 ~~officer]~~ authorized purchasing entity shall:

5865 (i) give notice to the resident contractor that the resident contractor qualifies as a
5866 preferred resident contractor; and

5867 (ii) issue the contract to the resident contractor if the resident contractor agrees, in
5868 writing, to meet the low bid within 72 hours after notification that the resident contractor is a
5869 preferred resident contractor.

5870 (b) The ~~[procurement officer]~~ authorized purchasing entity shall include the exact price
5871 submitted by the lowest bidder in the notice ~~[the procurement officer]~~ that the authorized
5872 purchasing entity submits to the preferred resident contractor.

5873 (c) The ~~[procurement officer]~~ authorized purchasing entity may not enter into a
5874 contract with any other bidder for the construction until 72 hours have elapsed after notification
5875 to the preferred resident contractor.

5876 (5) (a) If there is more than one preferred resident contractor, the ~~[procurement officer]~~
5877 authorized purchasing entity shall award the contract to the willing preferred resident
5878 contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the [procurement officer] authorized purchasing entity shall comply with the rules [adopted by the Procurement Policy Board] of the applicable rulemaking authority to determine which bidder should be awarded the contract.

(6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 143. Section **63G-6a-1004** is enacted to read:

63G-6a-1004. Exception for federally funded contracts.

This part does not apply to the extent it conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

Section 144. Section **63G-6a-1101** is enacted to read:

Part 11. Bonds

63G-6a-1101. Title.

This part is known as "Bonds."

Section 145. Section **63G-6a-1102**, which is renumbered from Section 63G-6-504 is renumbered and amended to read:

~~[63G-6-504].~~ **63G-6a-1102. Bid security requirements -- Directed suretyship prohibited -- Penalty.**

(1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive [~~sealed~~] bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

(2) When a bidder fails to comply with the requirement for bid security [~~set forth~~] described in the invitation for bids, the bid shall be rejected unless, pursuant to rules[~~it is determined~~] of the applicable rulemaking authority, the authorized purchasing entity determines that the failure to comply with the security requirements is nonsubstantial.

(3) After the bids are opened, they shall be irrevocable for the period specified in the

invitation for bids, except as provided in ~~[Subsection 63G-6-401(6)]~~ Section 63G-6a-605. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(4) (a) When issuing an invitation for a bid under this chapter, the ~~[chief]~~ procurement officer or the head of ~~[the purchasing agency]~~ an authorized purchasing entity responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type ~~[referred to]~~ described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

(b) A person who violates Subsection (4)(a) is guilty of an infraction.

Section 146. Section **63G-6a-1103**, which is renumbered from Section 63G-6-505 is renumbered and amended to read:

~~[63G-6-505].~~ 63G-6a-1103. Bonds necessary when contract is awarded -- Waiver -- Action -- Attorney fees.

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the state, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state; and

(b) a payment bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) (a) When a construction contract is awarded under this chapter, the ~~[chief]~~ procurement officer or the head of the ~~[purchasing agency]~~ authorized purchasing entity responsible for carrying out ~~[a]~~ the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific

5935 insurance or surety company, producer, agent, or broker.

5936 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

5937 (3) Rules of the applicable rulemaking authority may provide for waiver of the
5938 requirement of a bid, performance, or payment bond for circumstances in which the [state]
5939 procurement officer considers any or all of the bonds to be unnecessary to protect the [state]
5940 public procurement unit.

5941 (4) A person shall have a right of action on a payment bond under this section for any
5942 unpaid amount due [him] to the person if:

5943 (a) the person has furnished labor, service, equipment, or material for the work
5944 provided for in the contract for which the payment bond is furnished under this section; and

5945 (b) the person has not been paid in full within 90 days after the last [date] day on which
5946 the person performed the labor or service or supplied the equipment or material for which the
5947 claim is made.

5948 (5) An action upon a payment bond [~~shall~~] may only be brought in a court of
5949 competent jurisdiction in [~~any~~] a county where the construction contract was to be performed
5950 [~~and not elsewhere~~]. The action is barred if not commenced within one year after the last day
5951 on which the claimant performed the labor or service or supplied the equipment or material on
5952 which the claim is based. The obligee named in the bond need not be joined as a party to the
5953 action.

5954 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
5955 the prevailing party, which fees shall be taxed as costs in the action.

5956 Section 147. Section **63G-6a-1104**, which is renumbered from Section 63G-6-506 is
5957 renumbered and amended to read:

5958 [~~63G-6-506~~]. **63G-6a-1104. Preliminary notice requirement.**

5959 (1) Any person furnishing labor, service, equipment, or material for which a payment
5960 bond claim may be made under this chapter shall provide preliminary notice to the designated
5961 agent as prescribed by Section 38-1-32.5, except that this section does not apply:

5962 (a) to a person performing labor for wages; or

(b) if a notice of commencement is not filed as prescribed in Section 38-1-31.5 for the project or improvement for which labor, service, equipment, or material is furnished.

(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) must be provided before commencement of any action on the payment bond.

Section 148. Section **63G-6a-1105**, which is renumbered from Section 63G-6-507 is renumbered and amended to read:

~~[63G-6-507].~~ **63G-6a-1105. Form of bonds -- Effect of certified copy.**

The form of the bonds required by this part shall be established by ~~[rules and regulations]~~ rule made by the applicable rulemaking authority. Any person may obtain from the state a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Section 149. Section **63G-6a-1201** is enacted to read:

Part 12. Contracts and Change Orders

63G-6a-1201. Title.

This part is known as "Contracts and Change Orders."

Section 150. Section **63G-6a-1202**, which is renumbered from Section 63G-6-601 is renumbered and amended to read:

~~[63G-6-601].~~ **63G-6a-1202. Required contract clauses -- Computation of price adjustments -- Use of rules and regulations.**

(1) ~~[Rules and regulations]~~ The rules of the applicable rulemaking authority shall require for state construction contracts, and may permit or require for ~~[state]~~ contracts for supplies and services, the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions, and covering the following subjects:

(a) the unilateral right of the ~~[state]~~ procurement officer to order in writing changes in the work within the scope of the contract and changes in the time of performance of the

5991 contract that do not alter the scope of the contract work;

5992 (b) variations occurring between estimated quantities of work in a contract and actual

5993 quantities;

5994 (c) suspension of work ordered by the ~~[state]~~ procurement officer; and

5995 (d) site conditions differing from those indicated in the construction contract, or

5996 ordinarily encountered, except that differing site conditions clauses required by the rules ~~[and~~

5997 ~~regulations]~~ need not be included in a construction contract when:

5998 (i) the contract is negotiated~~[-when]~~;

5999 (ii) the contractor provides the site or design~~[-or when]~~; or

6000 (iii) the parties have otherwise agreed with respect to the risk of differing site

6001 conditions.

6002 (2) Adjustments in price pursuant to clauses ~~[promulgated under]~~ described in

6003 Subsection (1) shall be computed in one or more of the following ways:

6004 (a) by agreement on a fixed price adjustment before commencement of the pertinent

6005 performance or as soon thereafter as practicable;

6006 (b) by unit prices specified in the contract or subsequently agreed upon;

6007 (c) by the costs attributable to the events or situations under the clauses with

6008 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

6009 (d) in any other manner as the contracting parties may mutually agree; or

6010 (e) in the absence of agreement by the parties, by a unilateral determination by the

6011 ~~[state]~~ procurement officer of the costs attributable to the events or situations under the clauses

6012 with adjustment of profit or fee, all as computed by the ~~[state]~~ procurement officer in

6013 accordance with applicable ~~[sections of the]~~ rules and ~~[regulations issued under Subsection~~

6014 ~~63G-6-415(1) and]~~ subject to the provisions of Part ~~[8, Legal and Contractual Remedies]~~ 17,

6015 Procurement Appeals Board, and Part 18, Appeals to Court and Court Proceedings.

6016 (3) A contractor shall be required to submit cost or pricing data if any adjustment in

6017 contract price is subject to the provisions of Section ~~[63G-6-415]~~ 63G-6a-1206.

6018 (4) ~~[Rules and regulations]~~ The rules of the applicable rulemaking authority shall

6019 require for ~~[state]~~ construction contracts, and may permit or require for ~~[state]~~ contracts for
6020 supplies and services, the inclusion of clauses providing for appropriate remedies and covering
6021 at least the following subjects:

- 6022 (a) liquidated damages as appropriate;
6023 (b) specified excuses for delay or nonperformance;
6024 (c) termination of the contract for default; and
6025 (d) termination of the contract in whole or in part for the convenience of the ~~[state]~~
6026 public procurement unit.

6027 (5) The contract clauses ~~[promulgated under]~~ described in this section shall be ~~[set~~
6028 ~~forth in rules and regulations]~~ established by rule. However, the ~~[chief]~~ procurement officer or
6029 the head of ~~[a purchasing agency]~~ an authorized purchasing entity may modify the clauses for
6030 inclusion in any particular contract. ~~[Any]~~ The applicable rulemaking authority may, by rule,
6031 require that:

6032 (a) variations ~~[shall]~~ be supported by a written determination that describes the
6033 circumstances justifying the variations~~[-]~~; and

6034 (b) notice of any material variation shall be included in the invitation for bids or
6035 request for proposals.

6036 Section 151. Section **63G-6a-1203**, which is renumbered from Section 63G-6-603 is
6037 renumbered and amended to read:

6038 ~~[63G-6-603].~~ **63G-6a-1203. Contracts -- Certain indemnification**
6039 **provisions forbidden.**

6040 (1) As used in this section, "design professional" means:

- 6041 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
6042 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
6043 Licensing Act; and
6044 (c) a professional engineer or professional land surveyor, licensed under Title 58,
6045 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

6046 (2) (a) ~~[Beginning May 12, 2009, a]~~ A contract, including an amendment to an existing

contract, entered into under ~~[authority of]~~ this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

(b) Subsection (2)(a) may not be waived by contract.

(c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Section 152. Section **63G-6a-1204** is enacted to read:

63G-6a-1204. Multiyear contracts.

(1) Except as provided in Subsection (7), a public procurement unit may enter into a multiyear contract resulting from an invitation for bids or a request for proposals, if:

(a) the procurement officer determines, in the discretion of the procurement officer, that entering into a multiyear contract is in the best interest of the public procurement unit; and

(b) the invitation for bids or request for proposals:

(i) states the term of the contract, including all possible renewals of the contract;

(ii) states the conditions for renewal of the contract; and

(iii) includes the provisions of Subsections (3) through (5) that are applicable to the contract.

(2) In making the determination described in Subsection (1)(a), the procurement officer shall consider whether entering into a multiyear contract will:

(a) result in significant savings to the public procurement unit, including:

(i) reduction of the administrative burden in procuring, negotiating, or administering contracts;

(ii) continuity in operations of the public procurement unit; or

(iii) the ability to obtain a volume or term discount;

(b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or

6075 (c) provide an incentive for a bidder or offeror to improve productivity through capital
6076 investment or better technology.

6077 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not
6078 required to be in writing or otherwise recorded.

6079 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an
6080 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,
6081 including a contract that was awarded outside of an invitation for bids or request for proposals
6082 process, may not continue or be renewed for any year after the first year of the multiyear
6083 contract if adequate funds are not appropriated to continue or renew the contract.

6084 (4) A multiyear contract that is funded solely by federal funds may be continued or
6085 renewed for any year after the first year of the multiyear contract if:

6086 (a) adequate funds to continue or renew the contract have not been, but are expected to
6087 be appropriated by, and received from, the federal government;

6088 (b) continuation or renewal of the contract before the money is appropriated or
6089 received is permitted by the federal government; and

6090 (c) the contract states that it may be cancelled, without penalty, if the anticipated
6091 federal funds are not appropriated or received.

6092 (5) A multiyear contract that is funded in part by federal funds may be continued or
6093 renewed for any year after the first year of the multiyear contract if:

6094 (a) the portion of the contract that is to be funded by funds of a public entity are
6095 appropriated;

6096 (b) adequate federal funds to continue or renew the contract have not been, but are
6097 expected to be, appropriated by, and received from, the federal government;

6098 (c) continuation or renewal of the contract before the federal money is appropriated or
6099 received is permitted by the federal government; and

6100 (d) the contract states that it may be cancelled, without penalty, if the anticipated
6101 federal funds are not appropriated or received.

6102 (6) A public procurement unit may not continue or renew a multiyear contract after the

6103 end of the multiyear contract term or the renewal periods described in the contract, unless the
6104 public procurement unit engages in a new procurement process or complies with an exception,
6105 described in this chapter, to using a standard procurement process.

6106 (7) A multiyear contract, including any renewal periods, may not exceed a period of
6107 five years, unless:

6108 (a) the procurement officer determines, in writing, that:

6109 (i) a longer period is necessary in order to obtain the procurement item;

6110 (ii) a longer period is customary for industry standards; or

6111 (iii) a longer period is in the best interest of the public procurement unit; and

6112 (b) the written determination described in Subsection (7)(a) is included in the file
6113 relating to the procurement.

6114 (8) This section does not apply to a contract for the design or construction of a facility,
6115 a road, or a public transit project.

6116 Section 153. Section **63G-6a-1205**, which is renumbered from Section 63G-6-416 is
6117 renumbered and amended to read:

6118 ~~[63G-6-416].~~ **63G-6a-1205. Cost-plus-a-percentage-of-cost contract**
6119 **prohibited.**

6120 (1) ~~[Subject to the limitations of]~~ Except as otherwise provided in this section, a public
6121 procurement unit may use any type of contract [which] that will promote the best interests of
6122 the state [may be used; provided that the use of].

6123 (2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract [is
6124 prohibited. A].

6125 (3) A public procurement unit may not use a cost-reimbursement contract [may be used
6126 only when a determination is made in writing that such] unless the procurement officer makes a
6127 written determination that:

6128 (a) the contract is likely to be less costly to the [state] public procurement unit than any
6129 other type of contract; or [that]

6130 (b) it is impracticable to obtain the [supplies, services, or construction required except

6131 ~~under such a] procurement item under another type of contract.~~

6132 ~~[(2) Except with respect to firm fixed-price contracts, no contract type shall be used~~
6133 ~~unless it has been determined in writing by the chief procurement officer, the head of a~~
6134 ~~purchasing agency, or a designee of either officer that:]~~

6135 (4) A procurement officer, the head of an authorized procurement entity, or a designee
6136 of either, may not use a type of contract, other than a firm fixed-price contract, unless the
6137 procurement officer makes a written determination that:

6138 (a) the proposed contractor's accounting system will permit timely development of all
6139 necessary cost data in the form required by the specific contract type contemplated; and

6140 (b) the proposed contractor's accounting system is adequate to allocate costs in
6141 accordance with generally accepted accounting principles.

6142 Section 154. Section **63G-6a-1206**, which is renumbered from Section 63G-6-415 is
6143 renumbered and amended to read:

6144 **[63G-6-415]. 63G-6a-1206. Rules and regulations to determine allowable**
6145 **incurred costs -- Required information -- Auditing of books.**

6146 ~~[(1) Rules and regulations may be promulgated to set forth cost principles to be used to~~
6147 ~~determine the allowability of incurred costs for the purpose of reimbursing costs under contract~~
6148 ~~provisions which provide for the reimbursement of costs; provided that if a written~~
6149 ~~determination is approved at a level above the procurement officer, the cost principles may be~~
6150 ~~modified by contract.]~~

6151 ~~[(2) A person shall, except as provided in Subsection (4), submit cost or pricing data~~
6152 ~~and shall certify that, to the best of the person's knowledge and belief, the cost or pricing data~~
6153 ~~submitted were accurate, complete, and current as of a mutually determined specified date prior~~
6154 ~~to the date of:]~~

6155 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
6156 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
6157 calculating a reimbursement.

6158 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by

6159 contract, if the procurement officer or head of the authorized procurement entity approves the
6160 modification.

6161 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
6162 cost-based contract with a public procurement unit shall:

6163 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

6164 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
6165 data submitted is accurate and complete as of the date specified by the public procurement unit.

6166 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
6167 is before:

6168 (a) the pricing of any contract awarded by ~~[competitive sealed proposals]~~ a
6169 procurement process or pursuant to ~~[the]~~ a sole source procurement ~~[authority, where],~~ if the
6170 total contract price is expected to exceed an amount established by ~~[rules and regulations]~~ rule
6171 made by the applicable rulemaking authority; or

6172 (b) the pricing of any change order ~~[which]~~ that is expected to exceed an amount
6173 established by ~~[rules and regulations]~~ rule made by the applicable rulemaking authority.

6174 ~~[(3) Any]~~ (4) A contract or change order ~~[under which a certificate is required shall~~
6175 ~~contain]~~ that requires a certification described in Subsection (2) shall include a provision that
6176 the price to the ~~[state]~~ public procurement unit, including profit or fee, shall be adjusted to
6177 exclude any significant sums by which the ~~[state]~~ public procurement unit finds that the price
6178 was increased because the ~~[contractor-furnished]~~ contractor provided cost or pricing data
6179 ~~[were]~~ that was inaccurate, incomplete, or not current as of the date ~~[agreed upon between the~~
6180 ~~parties]~~ specified by the procurement officer.

6181 ~~[(4) The requirements of Subsections (2) and (3) need not be applied to contracts:]~~

6182 (5) A public procurement unit is not required to comply with Subsection (2) if:

6183 (a) ~~[where]~~ the contract price is based on adequate price competition;

6184 (b) ~~[where]~~ the contract price is based on established catalogue prices or market prices;

6185 (c) ~~[where contract prices are]~~ the contract price is set by law or ~~[regulation]~~ rule; or

6186 (d) ~~[where it is determined]~~ the procurement states, in writing;

6187 (i) that, in accordance with rules [and regulations that] made by the applicable
6188 rulemaking authority, the requirements of [this section] Subsection (2) may be waived[;]; and

6189 (ii) the reasons for [such] the waiver [are stated in writing].

6190 [(5)] (6) The [state] procurement officer may, at reasonable times and places, only to
6191 the extent that the books and records relate to the applicable cost or pricing data, audit the
6192 books and records of [any];

6193 (a) a person who has submitted cost or pricing data pursuant to this section; or [any]

6194 (b) a contractor or subcontractor under [any negotiated] a contract or subcontract other
6195 than a firm fixed-price contract [to the extent that the books and records relate to the cost or
6196 pricing data, contract, or subcontract. The].

6197 (7) Unless a shorter time is provided for by contract:

6198 (a) a person described in Subsection (6)(a) shall maintain the books and records [shall
6199 be maintained by the contractor] described in Subsection (6) for three years [following the end
6200 of] after the day on which the fiscal year in which final payment is made under the [prime
6201 contract and by the subcontractor for three years following the end of the] contract ends;

6202 (b) a contractor shall maintain the books and records described in Subsection (6) for
6203 three years after the day on which the fiscal year in which final payment under the prime
6204 contract ends; and

6205 (c) a subcontractor shall maintain the books and records described in Subsection (6) for
6206 three years after the day on which the fiscal year in which final payment is made under the
6207 subcontract[; unless a shorter period is otherwise authorized in writing] ends.

6208 Section 155. Section **63G-6a-1207**, which is renumbered from Section 63G-6-602 is
6209 renumbered and amended to read:

6210 **[63G-6-602]. 63G-6a-1207. Certification of change order.**

6211 (1) Under a construction contract, [any] a change order [which] that increases the
6212 contract amount [shall be subject to] may not be made without prior written certification that
6213 the change order is within the determined project or contract budget[. The certification shall be
6214 made] by:

6215 (a) the fiscal officer of the entity responsible for funding the project or ~~[the]~~ contract;
 6216 or ~~[other]~~

6217 (b) the official responsible for monitoring and reporting upon the status of the costs of
 6218 the total project or contract budget. ~~[If the certification discloses a resulting]~~

6219 (2) If a change order will result in an increase in the total project or contract budget,
 6220 ~~[the procurement officer shall not execute or make]~~ the change order may not be made, unless:

6221 (a) sufficient funds are ~~[available]~~ added to the project contract or budget; or

6222 (b) the scope of the project or contract is adjusted to permit the degree of completion
 6223 feasible within the total project or contract budget as it existed ~~[prior to]~~ before the change
 6224 order under consideration. ~~[However, with respect to the validity, as to the contractor, of any~~
 6225 ~~executed change order upon which the contractor has reasonably relied, it shall be presumed~~
 6226 ~~that there has been compliance with the provisions of this section.]~~

6227 (3) Notwithstanding any other provision of this section, it shall be presumed that this
 6228 section has been complied with if the contractor reasonably relies on an executed change order.

6229 Section 156. Section **63G-6a-1301** is enacted to read:

6230 **Part 13. General Construction Provisions**

6231 **63G-6a-1301. Title.**

6232 This part is known as "General Construction Provisions."

6233 Section 157. Section **63G-6a-1302**, which is renumbered from Section 63G-6-501 is
 6234 renumbered and amended to read:

6235 ~~[63G-6-501].~~ **63G-6a-1302. Alternative methods of construction**
 6236 **contracting management.**

6237 (1) ~~[(a) Rules shall]~~ The applicable rulemaking authority shall, by rule provide as many
 6238 alternative methods of construction contracting management as determined to be feasible.

6239 ~~[(b) These rules shall:]~~

6240 (2) The rules described in Subsection (1) shall:

6241 ~~[(i)]~~ (a) grant to the ~~[chief]~~ procurement officer or the head of the state purchasing
 6242 ~~[agency]~~ unit responsible for carrying out the construction project the discretion to select the

6243 appropriate method of construction contracting management for a particular project; and

6244 [(~~ii~~)] (b) require the procurement officer to execute and include in the contract file a
6245 written statement [~~setting forth~~] describing the facts [~~which~~] that led to the selection of a
6246 particular method of construction contracting management for each project.

6247 [(~~e~~)] (3) Before choosing a construction contracting management method, the [~~chief~~]
6248 procurement officer or the head of the state purchasing [~~agency~~] unit responsible for carrying
6249 out the construction project shall consider the following factors:

6250 [(~~i~~)] (a) when the project must be ready to be occupied;

6251 [(~~ii~~)] (b) the type of project;

6252 [(~~iii~~)] (c) the extent to which the requirements of the [~~procuring agencies~~] public
6253 procurement unit, and the [~~ways in which~~] way they are to be met are known;

6254 [(~~iv~~)] (d) the location of the project;

6255 [(~~v~~)] (e) the size, scope, complexity, and economics of the project;

6256 [(~~vi~~)] (f) the source of funding and any resulting constraints necessitated by the funding
6257 source;

6258 [(~~vii~~)] (g) the availability, qualification, and experience of [~~state~~] public personnel to
6259 be assigned to the project and [~~how much time the state~~] the amount of time that the public
6260 personnel can devote to the project; and

6261 [(~~viii~~)] (h) the availability, qualifications, and experience of outside consultants and
6262 contractors to complete the project under the various methods being considered.

6263 [(~~2~~)] (~~a~~) ~~Rules adopted by state public procurement units and local public procurement~~
6264 ~~units to implement this section may authorize the use of a Construction Manager/General~~
6265 ~~Contractor as one method of construction contracting management.]~~

6266 [(~~b~~) ~~Those rules shall require that:~~]

6267 [(~~i~~) ~~the Construction Manager/General Contractor shall be selected using one of the~~
6268 ~~source selection methods provided for in Part 4, Source Selections and Contract Formation,~~
6269 ~~and Section 63G-6-502; and]~~

6270 [(~~ii~~) ~~when entering into any subcontract that was not specifically included in the~~

6271 Construction Manager/General Contractor's cost proposal submitted under the requirements of
6272 Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that
6273 subcontractor by using one of the source selection methods provided for in Part 4, Source
6274 Selections and Contract Formation, in the same manner as if the subcontract work was
6275 procured directly by the state.]

6276 (4) An applicable rulemaking authority may make rules that authorize the use of a
6277 construction manager/general contractor as one method of construction contracting
6278 management.

6279 (5) The rules described in Subsection (2) shall require that:

6280 (a) the construction manager/general contractor be selected using:

6281 (i) a procurement process; or

6282 (ii) an exception to the requirement to use a procurement process; and

6283 (b) when entering into a subcontract that was not specifically included in the
6284 construction manager/general contractor's cost proposal, the construction manager/general
6285 contractor shall procure the subcontractor by using a procurement process, or an exception to
6286 the requirement to use a procurement process, in the same manner as if the subcontract work
6287 was procured directly by the public procurement unit.

6288 ~~[(3)]~~ (6) Procurement rules adopted by the State Building Board under ~~[Subsection (1)]~~
6289 Subsections (1) through (3) for state building construction projects may authorize the use of a
6290 design-build provider as one method of construction contracting management.

6291 (7) A design-build contract may include a provision for obtaining the site for the
6292 construction project.

6293 (8) A design-build contract or a construction manager/general contractor contract may
6294 include provision by the contractor of operations, maintenance, or financing.

6295 Section 158. Section **63G-6a-1303**, which is renumbered from Section 63G-6-604 is
6296 renumbered and amended to read:

6297 ~~[63G-6-604].~~ **63G-6a-1303. Drug and alcohol testing required for state**
6298 **construction contracts.**

6299 (1) As used in this section:

6300 (a) "Contractor" means a person who is or may be awarded a state construction
6301 contract.

6302 (b) "Covered individual" means an individual who:

6303 (i) on behalf of a contractor or subcontractor provides services directly related to
6304 design or construction under a state construction contract; and

6305 (ii) is in a safety sensitive position, including a design position that has responsibilities
6306 that directly affect the safety of an improvement to real property that is the subject of a state
6307 construction contract.

6308 (c) "Drug and alcohol testing policy" means a policy under which a contractor or
6309 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

6310 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,
6311 except the medically prescribed possession and use of a drug; or

6312 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

6313 (d) "Random testing" means that a covered individual is subject to periodic testing for
6314 drugs and alcohol:

6315 (i) in accordance with a drug and alcohol testing policy; and

6316 (ii) on the basis of a random selection process.

6317 ~~[(e) For purposes of Subsection (6), "state" includes any of the following of the state:]~~

6318 (e) "State executive entity" means:

6319 (i) a state executive branch:

6320 ~~[(i)-a]~~ (A) department;

6321 ~~[(ii)-a]~~ (B) division;

6322 ~~[(iii)-a]~~ (C) agency;

6323 ~~[(iv)-a]~~ (D) board;

6324 ~~[(v)-a]~~ (E) commission;

6325 ~~[(vi)-a]~~ (F) council;

6326 ~~[(vii)-a]~~ (G) committee; ~~[and]~~ or

6327 ~~[(viii) an] (H) institution[, including a state institution of higher education, as defined~~
6328 ~~under Section 53B-3-102.]; or~~

6329 (ii) a state institution of higher education, as defined in Section 53B-3-102.

6330 (f) "State construction contract" means a contract for design or construction entered
6331 into by a state ~~[public procurement unit]~~ executive entity.

6332 ~~[(g) (i) "Subcontractor" means a person under contract with a contractor or another~~
6333 ~~subcontractor to provide services or labor for design or construction.]~~

6334 ~~[(ii) "Subcontractor" includes a trade contractor or specialty contractor.]~~

6335 ~~[(iii) "Subcontractor" does not include a supplier who provides only materials,~~
6336 ~~equipment, or supplies to a contractor or subcontractor.]~~

6337 (2) Except as provided in Subsection (7), ~~[on and after July 1, 2010,]~~ a state ~~[public~~
6338 ~~procurement unit]~~ executive entity may not enter into a state construction contract unless the
6339 ~~[state]~~ public construction contract requires ~~[the following]~~ that the contractor demonstrate to
6340 the state executive entity that the contractor:

6341 ~~[(a) A contractor shall demonstrate to the state public procurement unit that the~~
6342 ~~contractor:]~~

6343 ~~[(i)]~~ (a) has and will maintain a drug and alcohol testing policy during the period of the
6344 state construction contract that applies to the covered individuals hired by the contractor;

6345 ~~[(ii)]~~ (b) posts in one or more conspicuous places notice to covered individuals hired
6346 by the contractor that the contractor has the drug and alcohol testing policy described in
6347 Subsection (2)(a)~~[(i); and];~~

6348 ~~[(iii)]~~ (c) subjects the covered individuals to random testing under the drug and alcohol
6349 testing policy described in Subsection (2)(a)~~[(i)]~~ if at any time during the period of the state
6350 construction contract there are 10 or more individuals who are covered individuals hired by the
6351 contractor~~[-]; and~~

6352 ~~[(b) A contractor shall demonstrate to the state public procurement unit that the~~
6353 ~~contractor]~~

6354 (d) requires that as a condition of contracting with the contractor, a subcontractor:

6355 (i) has and will maintain a drug and alcohol testing policy during the period of the state
6356 construction contract that applies to the covered individuals hired by the subcontractor;

6357 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
6358 subcontractor that the subcontractor has the drug and alcohol testing policy described in
6359 Subsection (2)(~~(b)~~)(d)(i); and

6360 (iii) subjects the covered individuals hired by the subcontractor to random testing under
6361 the drug and alcohol testing policy described in Subsection (2)(~~(b)~~)(d)(i) if at any time during
6362 the period of the state construction contract there are 10 or more individuals who are covered
6363 individuals hired by the subcontractor.

6364 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or
6365 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be
6366 suspended or debarred in accordance with this chapter.

6367 (b) ~~[On and after July 1, 2010, a]~~ A state ~~[public procurement unit]~~ executive entity
6368 shall include in a state construction contract:

6369 (i) a reference to the rules described in Subsection (4)(b); or

6370 (ii) if the ~~[state public procurement unit]~~ applicable rulemaking authority has not made
6371 the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor
6372 reasonable notice and opportunity to cure a violation of this section before suspension or
6373 debarment of the contractor or subcontractor in light of the circumstances of the state
6374 construction contract or the violation.

6375 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to
6376 comply with Subsection (2).

6377 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply
6378 with Subsection (2).

6379 ~~[(4) If otherwise authorized to make rules, in accordance with Title 63G, Chapter 3,~~
6380 ~~Utah Administrative Rulemaking Act, a state public procurement unit.]~~

6381 (4) An authorized rulemaking authority:

6382 (a) may make rules that establish the requirements and procedures a contractor ~~[shall]~~

6383 is required to follow to comply with Subsection (2); and

6384 (b) shall make rules that establish:

6385 (i) the penalties that may be imposed in accordance with Subsection (3); and

6386 (ii) a process that provides a contractor or subcontractor reasonable notice and

6387 opportunity to cure a violation of this section before suspension or debarment of the contractor

6388 or subcontractor in light of the circumstances of the state construction contract or the violation.

6389 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection

6390 (2):

6391 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,

6392 or contractor under Part ~~[8, Legal and Contractual Remedies]~~ 17, Procurement Appeals Board,

6393 or Part 18, Appeals to Court and Court Proceedings; and

6394 (b) may not be used by a state public procurement unit, a prospective bidder, an

6395 offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or

6396 terminate the design or construction under a state construction contract.

6397 (6) (a) After a state ~~[public procurement unit]~~ executive entity enters into a state

6398 construction contract in compliance with this section, the state is not required to audit, monitor,

6399 or take any other action to ensure compliance with this section.

6400 (b) The state is not liable in any action related to this section, including not being liable

6401 in relation to:

6402 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

6403 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and

6404 alcohol testing policy;

6405 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing

6406 policy;

6407 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing

6408 policy, including procedures for:

6409 (A) collection of a sample;

6410 (B) testing of a sample;

6411 (C) evaluation of a test; or
6412 (D) disciplinary or rehabilitative action on the basis of a test result;
6413 (v) an individual being under the influence of drugs or alcohol; or
6414 (vi) an individual under the influence of drugs or alcohol harming another person or
6415 causing property damage.

6416 (7) This section does not apply if the state [~~public procurement unit~~] executive entity
6417 determines that the application of this section would severely disrupt the operation of a [~~state~~
6418 ~~agency~~] public procurement unit to the detriment of the [~~state agency~~] public procurement unit
6419 or the general public, including:

6420 (a) jeopardizing the receipt of federal funds;
6421 (b) causing the state construction contract [~~being~~] to be a sole source contract; or
6422 (c) causing the state construction contract [~~being~~] to be an emergency procurement.

6423 (8) If a contractor or subcontractor meets the requirements of this section, this section
6424 may not be construed to restrict the contractor's or subcontractor's ability to impose or
6425 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

6426 Section 159. Section **63G-6a-1401** is enacted to read:

6427 **Part 14. Transportation Contracts**

6428 **63G-6a-1401. Title.**

6429 This part is known as "Transportation Contracts."

6430 Section 160. Section **63G-6a-1402**, which is renumbered from Section 63G-6-502 is
6431 renumbered and amended to read:

6432 **[63G-6-502]. 63G-6a-1402. Procurement of design-build transportation**
6433 **project contracts.**

6434 (1) As used in this section:

6435 (a) "Design-build transportation project contract" means the procurement of both the
6436 design and construction of a transportation project in a single contract with a company or
6437 combination of companies capable of providing the necessary engineering services and
6438 construction.

6439 (b) "Transportation agency" means:

6440 (i) the Department of Transportation;

6441 (ii) a county of the first or second class, as defined in Section 17-50-501;

6442 (iii) a municipality of the first class, as defined in Section 10-2-301;

6443 (iv) a public transit district that has more than 200,000 people residing within its
6444 boundaries; and

6445 (v) a public airport authority.

6446 (2) Except as provided in Subsection (3), a transportation agency may award a
6447 design-build transportation project contract for any transportation project that has an estimated
6448 cost of at least \$50,000,000 by following the requirements of this section.

6449 (3) (a) The Department of Transportation:

6450 (i) may award a design-build transportation project contract for any transportation
6451 project by following the requirements of this section; and

6452 (ii) shall make rules, ~~[by following the procedures and requirements of]~~ in accordance
6453 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
6454 the procurement of its design-build transportation project contracts in addition to those required
6455 by this section.

6456 (b) A public transit district that has more than 200,000 people residing within its
6457 boundaries:

6458 (i) may award a design-build transportation project contract for any transportation
6459 project by following the requirements of this section; and

6460 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
6461 of its design-build transportation project contracts in addition to those required by this section.

6462 (c) A design-build transportation project contract authorized under this Subsection (3)
6463 is not subject to the estimated cost threshold ~~[under]~~ described in Subsection (2).

6464 (d) A design-build transportation project contract may include provision by the
6465 contractor of operations, maintenance, or financing.

6466 (4) (a) Before entering into a design-build transportation project contract, a

6467 transportation agency may issue a request for qualifications to prequalify potential contractors.

6468 (b) Public notice of the request for qualifications shall be given in accordance with
6469 ~~[policy]~~ board rules.

6470 (c) A transportation agency shall require, as part of the qualifications specified in the
6471 request for qualifications, that potential contractors at least demonstrate their:

6472 (i) construction experience;

6473 (ii) design experience;

6474 (iii) financial, manpower, and equipment resources available for the project; and

6475 (iv) experience in other design-build transportation projects with attributes similar to
6476 the project being procured.

6477 (d) The request for qualifications shall identify the number of eligible competing
6478 proposers that the transportation agency will select to submit a proposal, which ~~[must be at~~
6479 ~~least]~~ may not be less than two.

6480 (5) ~~[(a)]~~ The transportation agency shall:

6481 ~~[(i)]~~ (a) evaluate the responses received from the request for qualifications;

6482 ~~[(ii)]~~ (b) select from their number those qualified to submit proposals; and

6483 ~~[(iii)]~~ (c) invite those respondents to submit proposals based upon the transportation
6484 agency's request for proposals.

6485 ~~[(b)-(i)]~~ (6) Except as provided in Subsection ~~[(5)(b)(ii)]~~ (7), if the transportation
6486 agency fails to receive at least two qualified eligible competing ~~[proposers]~~ proposals, the
6487 transportation agency shall readvertise the project.

6488 ~~[(ii)]~~ (7) A transportation agency may award a contract for a transportation project that
6489 has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

6490 ~~[(A)]~~ (a) only a single proposal is received; and

6491 ~~[(B)]~~ (b) the transportation agency determines that:

6492 ~~[(i)]~~ (i) the proposal is advantageous to the state; and

6493 ~~[(ii)]~~ (ii) the proposal price is reasonable.

6494 ~~[(6)]~~ (8) The transportation agency shall issue a request for proposals to those qualified

6495 respondents that:

6496 (a) includes a scope of work statement constituting an information for proposal that
6497 may include:

6498 (i) preliminary design concepts;

6499 (ii) design criteria, needs, and objectives;

6500 (iii) warranty and quality control requirements;

6501 (iv) applicable standards;

6502 (v) environmental documents;

6503 (vi) constraints;

6504 (vii) time expectations or limitations;

6505 (viii) incentives or disincentives; and

6506 (ix) other special considerations;

6507 (b) requires submitters to provide:

6508 (i) a sealed cost proposal;

6509 (ii) a critical path matrix schedule, including cash flow requirements;

6510 (iii) proposal security; and

6511 (iv) other items required by the department for the project; and

6512 (c) may include award of a stipulated fee to be paid to ~~[submitters]~~ offerors who submit
6513 unsuccessful proposals.

6514 ~~[(7)]~~ (9) The transportation agency shall:

6515 (a) evaluate the submissions received in response to the request for proposals from the
6516 prequalified ~~[proposers]~~ offerors;

6517 (b) comply with rules relating to discussion of proposals, best and final offers, and
6518 evaluations of the proposals submitted; and

6519 (c) after considering price and other identified factors, award the contract to the
6520 responsive and responsible ~~[proposer]~~ offeror whose proposal is most advantageous to the
6521 state.

6522 Section 161. Section **63G-6a-1403**, which is renumbered from Section 63G-6-503 is

6523 renumbered and amended to read:

6524 ~~[63G-6-503].~~ **63G-6a-1403. Procurement of tollway development**
6525 **agreements.**

6526 (1) As used in this section~~[(a) "Department" means the Department of~~
6527 ~~Transportation. (b) "Tollway", "tollway development agreement" [has the same meaning] is as~~
6528 defined in Section 72-6-202.

6529 (2) The ~~[department]~~ Department of Transportation and the Transportation
6530 Commission:

6531 (a) may solicit a tollway development agreement proposal by following the
6532 requirements of this section;

6533 (b) may award a solicited tollway development agreement contract for any tollway
6534 project by following the requirements of this section; and

6535 (c) shall make rules, ~~[by following the procedures and requirements of]~~ in accordance
6536 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
6537 the procurement of tollway development agreement proposals in addition to those required by
6538 this section.

6539 (3) (a) Before entering into a tollway development agreement, the ~~[department]~~
6540 Department of Transportation may issue a request for qualifications to prequalify potential
6541 contractors.

6542 (b) Public notice of the request for qualifications shall be given in accordance with
6543 ~~[policy]~~ board rules.

6544 (c) The ~~[department]~~ Department of Transportation shall require, as part of the
6545 qualifications specified in the request for qualifications, that potential contractors at least
6546 provide:

6547 (i) a demonstration of their experience with other transportation concession projects
6548 with attributes similar to the project being procured;

6549 (ii) a financial statement of the firm or consortium of firms making the proposal;

6550 (iii) a conceptual project development plan and financing plan;

- 6551 (iv) the legal structure of the firm or consortium of firms making the proposal;
6552 (v) the organizational structure for the project; and
6553 (vi) a statement describing why the firm or consortium of firms is best qualified for the
6554 project.
- 6555 (d) The request for qualifications shall identify the number of eligible competing
6556 [~~proposers~~] offerors that the [~~department~~] Department of Transportation will select to submit a
6557 proposal.
- 6558 (4) The [~~department~~] Department of Transportation shall:
- 6559 (a) evaluate the responses received from the request for qualifications;
6560 (b) select from their number those qualified to submit proposals; and
6561 (c) invite those respondents to submit proposals based upon the [~~department's~~]
6562 Department of Transportation's request for proposals.
- 6563 (5) The [~~department~~] Department of Transportation shall issue a request for proposals
6564 to those qualified respondents that may require, as appropriate for the procurement:
- 6565 (a) a description of the proposed project or projects;
6566 (b) a financial plan for the project, including:
6567 (i) the anticipated financial commitment of all parties;
6568 (ii) equity, debt, and other financing mechanisms;
6569 (iii) an analysis of the projected return, rate of return, or both; and
6570 (iv) the monetary benefit and other value to a government entity;
6571 (c) assumptions about user fees or toll rates;
6572 (d) a project development and management plan, including:
6573 (i) the contracting structure;
6574 (ii) the plan for quality management;
6575 (iii) the proposed toll enforcement plan; and
6576 (iv) the plan for safety management; and
6577 (e) that the proposal to comply with the minimum guidelines for tollway development
6578 agreement proposals under Section 72-6-204.

6579 (6) The ~~[department]~~ Department of Transportation and the Transportation
6580 Commission:

6581 (a) shall evaluate the submissions received in response to the request for proposals
6582 from the prequalified ~~[proposers]~~ offerors;

6583 (b) shall comply with rules relating to discussion of proposals, best and final offers,
6584 and evaluations of the proposals submitted; and

6585 (c) may, after considering price and other identified factors and complying with the
6586 requirements of Section 72-6-206, award the contract to the responsive and responsible
6587 ~~[proposer]~~ offeror whose proposal is most advantageous to the state.

6588 Section 162. Section **63G-6a-1501** is enacted to read:

6589 **Part 15. Architect-Engineer Services**

6590 **63G-6a-1501. Title.**

6591 This part is known as "Architect-Engineer Services."

6592 Section 163. Section **63G-6a-1502**, which is renumbered from Section 63G-6-701 is
6593 renumbered and amended to read:

6594 ~~[63G-6-701].~~ **63G-6a-1502. Policy regarding architect-engineer services.**

6595 (1) It is the policy of this state to publicly announce all requirements for
6596 architect-engineer services and to negotiate contracts for architect-engineer services on the
6597 basis of demonstrated competence and qualification for the type of services required, and at fair
6598 and reasonable prices.

6599 (2) Architect-engineer services shall be procured as provided in this part except as
6600 authorized by Sections ~~[63G-6-409 through 63G-6-411]~~ 63G-6a-408, 63G-6a-802, and
6601 63G-6a-803.

6602 (3) This part does not affect the authority of, and does not apply to procedures
6603 undertaken by, a public procurement unit to obtain the services of architects or engineers in the
6604 capacity of employees of ~~[such]~~ the public procurement unit.

6605 Section 164. Section **63G-6a-1503**, which is renumbered from Section 63G-6-702 is
6606 renumbered and amended to read:

6607 ~~[63G-6-702].~~ **63G-6a-1503.** Selection committee for architect-engineer
6608 services.

6609 (1) In the procurement of architect-engineer services, the ~~[chief]~~ procurement officer or
6610 the head of a state purchasing ~~[agency]~~ unit shall encourage firms engaged in the lawful
6611 practice of their profession to submit annually a statement of qualifications and performance
6612 data.

6613 (2) The Building Board shall be the ~~[selection]~~ evaluation committee for
6614 architect-engineer services contracts under its authority. ~~[Selection committees]~~

6615 (3) An evaluation committee for architect-engineer services contracts not under the
6616 authority of the Building Board shall be established in accordance with rules ~~[and regulations]~~
6617 ~~promulgated by the policy board. Selection committees shall]~~ made by the applicable
6618 rulemaking authority.

6619 (4) An evaluation committee shall:

6620 (a) evaluate current statements of qualifications and performance data on file with the
6621 state, together with those that may be submitted by other firms in response to the
6622 announcement of the proposed contract~~[- Selection committees shall];~~

6623 (b) consider no less than three firms ~~[and then shall select therefrom,];~~ and

6624 (c) based upon criteria established and published by the ~~[selection committees,]~~
6625 authorized purchasing entity, select no less than three of the firms considered to be the most
6626 highly qualified to provide the services required.

6627 Section 165. Section **63G-6a-1504**, which is renumbered from Section 63G-6-703 is
6628 renumbered and amended to read:

6629 ~~[63G-6-703].~~ **63G-6a-1504.** Selection as part of design-build or lease.

6630 Notwithstanding any other provision of this chapter, architect-engineer services may be
6631 procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
6632 and Management, as part of the services obtained in a design-build contract or as part of the
6633 services obtained in a lease contract for real property, ~~[provided that]~~ if the qualifications of
6634 those providing the architect-engineer services are part of the consideration in the selection

6635 process.

6636 Section 166. Section **63G-6a-1505**, which is renumbered from Section 63G-6-704 is
6637 renumbered and amended to read:

6638 ~~[63G-6-704].~~ **63G-6a-1505. Determination of compensation for**
6639 **architect-engineer services.**

6640 (1) The procurement officer shall award a contract to a qualified firm at compensation
6641 ~~[which]~~ that the procurement officer determines, in writing, to be fair and reasonable to the
6642 state.

6643 (2) In making ~~[this decision,]~~ the determination described in Subsection (1), the
6644 procurement officer shall take into account the services':

6645 (a) estimated value~~[, the];~~

6646 (b) scope~~[, and];~~

6647 (c) complexity~~[,];~~ and ~~[the]~~

6648 (d) professional nature ~~[of the services to be rendered. Should].~~

6649 (3) If the procurement officer [be] is unable to agree to a satisfactory contract with the
6650 firm first selected, at a price the procurement officer determines to be fair and reasonable to the
6651 state, [discussions with that firm shall be formally terminated. The] the procurement officer
6652 shall [then]:

6653 (a) formally terminate discussions with that firm; and

6654 (b) undertake discussions with a second qualified firm. ~~[Failing accord with the~~
6655 ~~second firm, the procurement officer shall formally terminate discussions. The procurement~~
6656 ~~officer shall then]~~

6657 (4) If the procurement officer is unable to agree to a satisfactory contract with the
6658 second firm selected, at a price the procurement officer determines to be fair and reasonable to
6659 the state, the procurement officer shall:

6660 (a) formally terminate discussions with that firm; and

6661 (b) undertake discussions with a third qualified firm. ~~[Should the procurement officer~~
6662 ~~be]~~

(5) If the procurement officer is unable to award a contract at a fair and reasonable price ~~[with]~~ to any of the selected firms, the procurement officer shall:

(a) select additional firms~~[-];~~ and ~~[the procurement officer shall]~~

(b) continue discussions in accordance with this part until an agreement is reached.

Section 167. Section **63G-6a-1506**, which is renumbered from Section 63G-6-705 is renumbered and amended to read:

~~[63G-6-705].~~ **63G-6a-1506. Restrictions on procurement of architect-engineer services.**

(1) Except as provided in Subsection (2), when ~~[a public procurement unit]~~ an authorized purchasing entity, in accordance with Section ~~[63G-6-704]~~ 63G-6a-1502, elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:

(a) a higher education entity, or any part of one, may not submit a proposal in response to the ~~[public procurement unit's]~~ authorized purchasing entity's competitive procurement process; and

(b) the ~~[public procurement unit]~~ authorized purchasing entity may not award a contract to perform the architect or engineering services solicited in the competitive procurement process to a higher education entity or any part of one.

(2) ~~[A public procurement unit need not comply with the requirements of]~~ Subsection (1) does not apply when the ~~[public procurement unit]~~ authorized purchasing entity is procuring architect or engineer services for contracts related to research activities and technology transfer.

Section 168. Section **63G-6a-1601** is enacted to read:

Part 16. Controversies and Protests

63G-6a-1601. Title.

This part is known as "Controversies and Protests."

Section 169. Section **63G-6a-1602**, which is renumbered from Section 63G-6-805 is renumbered and amended to read:

~~[63G-6-805].~~ **63G-6a-1602.** Authority to resolve controversy between public procurement unit and contractor.

The ~~[chief]~~ procurement officer, the head of ~~[a purchasing agency]~~ an authorized purchasing entity, or a designee of either ~~[officer is authorized, prior to]~~ may, before commencement of an action in court concerning the controversy, ~~[to]~~ settle and resolve a controversy ~~[which]~~ that arises between ~~[the state]~~ a public procurement unit or an authorized purchasing entity and a contractor ~~[under or by virtue of a contract between them. This includes, without limitation, controversies]~~ in relation to a contract or a procurement, including a controversy based upon breach of contract, ~~[mistakes]~~ a mistake, misrepresentation, or other cause for contract modification or rescission.

Section 170. Section **63G-6a-1603**, which is renumbered from Section 63G-6-801 is renumbered and amended to read:

~~[63G-6-801].~~ **63G-6a-1603.** Protest to procurement officer -- Time -- Authority to resolve protest.

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the ~~[chief]~~ procurement officer or the head of ~~[a purchasing agency]~~ an authorized purchasing entity. A protest with respect to an invitation for bids or a request for proposals shall be submitted in writing ~~[prior to]~~ before the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest ~~[prior to]~~ before the bid opening or the closing date for proposals. ~~[The protest shall be submitted]~~ An aggrieved person shall submit a protest in writing within ~~[five working]~~ seven days after the aggrieved person knows or should have known of the facts giving rise ~~[thereto]~~ to the protest.

(2) Subject to the applicable requirements in Section 63G-10-403, the ~~[chief]~~ procurement officer, the head of ~~[a purchasing agency]~~ an authorized purchasing entity, or a designee of either ~~[officer shall have the authority, prior to]~~ may, before the commencement of an action in court concerning the controversy, ~~[to]~~ settle and resolve the protest.

Section 171. Section **63G-6a-1604**, which is renumbered from Section 63G-6-806 is

6719 renumbered and amended to read:

6720 ~~[63G-6-806].~~ **63G-6a-1604. Decisions to be in writing -- Effect of no**
6721 **writing.**

6722 (1) The ~~[chief procurement officer, the head of a purchasing agency, or the designee of~~
6723 ~~either officer]~~ person who conducts a hearing under Section 63G-6a-1603 shall promptly issue
6724 a written decision regarding any protest, debarment ~~[or]~~, suspension, or contract controversy if
6725 it is not settled by a mutual agreement.

6726 (2) The decision shall state the reasons for the action taken and inform the protestor,
6727 contractor, or prospective contractor of the right to judicial or administrative review as
6728 provided in this chapter.

6729 ~~[(2)]~~ (3) A decision ~~[shall be]~~ described in this section is effective until stayed or
6730 reversed on appeal, except to the extent provided in Section ~~[63G-6-802]~~ 63G-6a-1607. ~~[A~~
6731 ~~copy of the decision under Subsection (1) shall be mailed]~~

6732 (4) A person who issues a decision under this section shall mail or otherwise
6733 ~~[furnished]~~ immediately furnish a copy of the decision to the protestor, prospective contractor,
6734 or contractor.

6735 (5) The decision shall be final and conclusive unless the protestor, prospective
6736 contractor, or contractor;

6737 (a) appeals administratively to the ~~[procurement]~~ applicable appeals board, if any, in
6738 accordance with Subsection ~~[63G-6-810]~~ 63G-6a-1703(2); or ~~[the protestor, prospective~~
6739 ~~contractor, or contractor]~~

6740 (b) if there is not an applicable appeals board, commences an action in district court in
6741 accordance with Section ~~[63G-6-815]~~ 63G-6a-1803.

6742 ~~[(3)]~~ (6) If the ~~[chief]~~ procurement officer, the head of ~~[a purchasing agency]~~ an
6743 authorized purchasing entity, or the designee of either ~~[officer]~~ does not issue the written
6744 decision ~~[regarding a contract controversy]~~ as required by this section within 60 ~~[calendar]~~ days
6745 after the day on which a written request for a final decision is made, or within ~~[such]~~ a longer
6746 period as may be agreed upon by the parties, then the protestor, contractor, or prospective

6747 contractor may proceed as if an adverse decision had been received.

6748 Section 172. Section **63G-6a-1605**, which is renumbered from Section 63G-6-907 is
6749 renumbered and amended to read:

6750 ~~[63G-6-907].~~ **63G-6a-1605. Resolution of local public procurement**
6751 **controversies.**

6752 ~~[Any]~~ A local public procurement unit ~~[is authorized to]~~ may enter into an agreement
6753 with the State Procurement Appeals Board to resolve controversies between the local public
6754 procurement unit and its bidders, offerors, contractors, regardless of whether ~~[or not such]~~ the
6755 controversy arose from a cooperative purchasing agreement.

6756 Section 173. Section **63G-6a-1606**, which is renumbered from Section 63G-6-802 is
6757 renumbered and amended to read:

6758 ~~[63G-6-802].~~ **63G-6a-1606. Effect of timely protest.**

6759 In the event of a timely protest under Subsection ~~[63G-6-801(1), 63G-6-810(1), or~~
6760 ~~63G-6-815(1), the state shall]~~ 63G-6a-1603(1), 63G-6a-1703(1), or 63G-6a-1803(1), an
6761 authorized purchasing entity may not proceed further with the solicitation or with the award of
6762 the contract until all administrative and judicial remedies ~~[have been]~~ are exhausted or until the
6763 ~~[chief]~~ procurement officer, after consultation with the head of the ~~[using agency]~~ public
6764 procurement unit or the head of ~~[a purchasing agency]~~ an authorized purchasing entity, makes a
6765 written determination that the award of the contract without delay is necessary to protect
6766 substantial interests of the state.

6767 Section 174. Section **63G-6a-1607**, which is renumbered from Section 63G-6-803 is
6768 renumbered and amended to read:

6769 ~~[63G-6-803].~~ **63G-6a-1607. Costs to or against protestor.**

6770 (1) When a protest is sustained administratively or upon administrative or judicial
6771 review and the protesting bidder or offeror should have been awarded the contract under the
6772 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
6773 the state:

6774 (a) the reasonable costs incurred in connection with the solicitation, including bid

6775 preparation and appeal costs; and

6776 (b) any equitable relief determined to be appropriate by the reviewing administrative or
6777 judicial body.

6778 (2) When a protest is not sustained by the [~~Procurement Appeals Board~~] appeals board,
6779 the protestor shall reimburse the [~~Division of Purchasing and General Services~~] public
6780 procurement unit for the per diem and expenses paid by the [~~division~~] public procurement unit
6781 to witnesses or appeals board members and any additional expenses incurred by the [~~state~~
6782 ~~agency~~] staff of the public procurement unit who have provided materials and administrative
6783 services to the appeals board for that case.

6784 Section 175. Section **63G-6a-1701** is enacted to read:

6785 **Part 17. Procurement Appeals Board**

6786 **63G-6a-1701. Title.**

6787 This part is known as "Procurement Appeals Board."

6788 Section 176. Section **63G-6a-1702**, which is renumbered from Section 63G-6-807 is
6789 renumbered and amended to read:

6790 **[63G-6-807]. 63G-6a-1702. Creation of Procurement Appeals Board --**
6791 **Creation of other appeals boards.**

6792 (1) (a) A Procurement Appeals Board is created in the executive branch. The
6793 Procurement Appeals Board shall be composed of a chair and one other member, to be
6794 appointed by the governor, and a third member to be designated by the two appointed members
6795 on a case-by-case basis.

6796 (b) None of the members of the Procurement Appeals Board shall otherwise be
6797 full-time employees of the state.

6798 (c) The appointed members of the Procurement Appeals Board shall have been
6799 members in good standing of the state bar for at least five years and shall be experienced in
6800 contract or commercial matters.

6801 (d) The designated member shall possess the technical expertise and experience needed
6802 for the proper disposition of the factual issues presented by the case.

6803 (2) (a) Except as required by Subsection (2)(b), as terms of current [board] members
6804 expire, the governor shall appoint each new member or reappointed member to a four-year
6805 term.

6806 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
6807 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
6808 [board] members are staggered so that approximately half of the [board is] members of the
6809 Procurement Appeals Board are appointed every two years.

6810 (c) The designated member shall serve for the case on which designated until the final
6811 disposition of the case.

6812 (d) Appointed members may be reappointed for succeeding terms and may continue to
6813 serve after the expiration of their terms until a successor takes office.

6814 (e) Qualified persons may be redesignated as members.

6815 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
6816 appointed for the unexpired term.

6817 (4) A member may not receive compensation or benefits for the member's service, but
6818 may receive per diem and travel expenses in accordance with:

6819 (a) Section 63A-3-106;

6820 (b) Section 63A-3-107; and

6821 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
6822 63A-3-107.

6823 (5) A local public procurement unit, a non-executive state procurement unit, or a state
6824 institution of higher education may form its own appeals board to hear procurement protests.

6825 Section 177. Section **63G-6a-1703**, which is renumbered from Section 63G-6-810 is
6826 renumbered and amended to read:

6827 ~~[63G-6-810].~~ **63G-6a-1703. Jurisdiction of appeals board.**

6828 Unless an action has been initiated previously in district courts for essentially the same
6829 cause of action, ~~[the]~~ an appeals board shall have jurisdiction to review and determine de novo:

6830 (1) any protest of a solicitation or award of a contract addressed to the appeals board by

an aggrieved actual or prospective bidder or offeror, or a contractor; and

(2) any appeal by an aggrieved party from a decision rendered or considered to have been rendered pursuant to Section ~~[63G-6-806]~~ 63G-6a-1604.

Section 178. Section **63G-6a-1704**, which is renumbered from Section 63G-6-808 is renumbered and amended to read:

~~[63G-6-808].~~ **63G-6a-1704. Rules of procedure to be adopted.**

The Procurement Appeals Board;

(1) shall adopt rules of procedure ~~[which]~~ that, to the fullest extent possible, ~~[with]~~ provide for the expeditious resolution of controversies, including procedures to encourage agreements between the parties to a controversy prior to a hearing~~[- The board]; and~~

(2) may adopt small claims procedures for the resolution of controversies involving claims of less than \$15,000.

Section 179. Section **63G-6a-1705**, which is renumbered from Section 63G-6-809 is renumbered and amended to read:

~~[63G-6-809].~~ **63G-6a-1705. Decisions of appeals board to be in writing.**

~~[The Procurement Appeals Board shall]~~

An appeals board shall:

(1) issue a decision in writing or take other appropriate action of each appeal submitted~~[- A]; and~~

(2) provide a copy of any decision ~~[shall be provided]~~ to all parties and the ~~[chief]~~ procurement officer or the head of ~~[a purchasing agency]~~ an authorized purchasing entity.

Section 180. Section **63G-6a-1706**, which is renumbered from Section 63G-6-811 is renumbered and amended to read:

~~[63G-6-811].~~ **63G-6a-1706. Time limits to file protest or appeal -- Effect of filing.**

(1) For a protest under Subsection ~~[63G-6-810]~~ 63G-6a-1703(1), the aggrieved person shall file a protest with the appeals board within ~~[five working]~~ seven days after the aggrieved person knows or should have known of the facts and circumstances upon which the protest is

based~~[; provided, however,]~~ except that a protest with respect to an invitation for bids or request for proposals shall be filed ~~[prior to]~~ before the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the protest ~~[prior to]~~ before the bid opening or the closing date for proposals.

(2) For an appeal from a decision regarding a protested solicitation or award, the aggrieved person shall file an appeal within seven ~~[calendar days of receipt of a]~~ days after the day on which the decision is rendered or considered to have been rendered ~~[pursuant to Section 63G-6-806]~~ under Section 63G-6a-1604.

(3) For an appeal from a decision regarding a debarment, suspension, or contract controversy, the aggrieved person shall file an appeal within 60 ~~[calendar days of receipt of]~~ days after the day on which the person receives a decision rendered or considered to have been rendered ~~[pursuant to Section 63G-6-806]~~ under Section 63G-6a-1604.

Section 181. Section **63G-6a-1707**, which is renumbered from Section 63G-6-812 is renumbered and amended to read:

~~[63G-6-812].~~ **63G-6a-1707.** **Discontinued appeal with prejudice, except as authorized.**

After notice of an appeal ~~[has been]~~ is filed with the ~~[Procurement Appeals Board]~~ applicable appeals board, no party may discontinue the appeal without prejudice, except as authorized by the ~~[Procurement Appeals Board]~~ applicable appeals board.

Section 182. Section **63G-6a-1708**, which is renumbered from Section 63G-6-813 is renumbered and amended to read:

~~[63G-6-813].~~ **63G-6a-1708.** **Factual determination of appeals board final and conclusive.**

(1) On any protest or appeal under Section ~~[63G-6-810]~~ 63G-6a-1703, the ~~[Procurement Appeals Board]~~ applicable appeals board shall promptly decide the contract controversy or whether the ~~[solicitation]~~ procurement or award was in accordance with this chapter. Any prior determinations by administrative officials regarding protests of ~~[solicitations]~~ procurements or awards, suspension or debarments, contract controversies, or

6887 breach of contract controversies ~~[shall not be]~~ are not final or conclusive.

6888 (2) A determination of an issue of fact by the ~~[Procurement Appeals Board]~~ applicable
6889 appeals board under Subsection (1) ~~[shall be]~~ is final and conclusive unless arbitrary and
6890 capricious or clearly erroneous. No determination on an issue of law ~~[shall be]~~ by the
6891 applicable appeals board is final or conclusive.

6892 (3) The applicable appeals board may, without a hearing, determine, in writing, that a
6893 protest is without merit.

6894 Section 183. Section **63G-6a-1801** is enacted to read:

6895 **Part 18. Appeals to Court and Court Proceedings**

6896 **63G-6a-1801. Title.**

6897 This part is known as "Appeals to Court and Court Proceedings."

6898 Section 184. Section **63G-6a-1802**, which is renumbered from Section 63G-6-814 is
6899 renumbered and amended to read:

6900 ~~[63G-6-814].~~ **63G-6a-1802. Right to appeal to Court of Appeals.**

6901 Any person receiving an adverse decision, or the state, may appeal a decision of ~~[the~~
6902 ~~Procurement Appeals Board]~~ an appeals board to the Court of Appeals. ~~[However, no appeal~~
6903 ~~may be made by the state]~~ The state may not appeal a decision of an appeals board unless:

6904 (1) recommended by the chief procurement officer or the head of the state purchasing
6905 [agency] unit involved, and approved by the attorney general[-]; or

6906 (2) for a non-executive state procurement unit, approved by a person authorized by rule
6907 made by the applicable rulemaking authority.

6908 Section 185. Section **63G-6a-1803**, which is renumbered from Section 63G-6-815 is
6909 renumbered and amended to read:

6910 ~~[63G-6-815].~~ **63G-6a-1803. Jurisdiction of district court.**

6911 (1) The district court shall have jurisdiction over an action, whether the action is at law
6912 or in equity, between the state and:

6913 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in
6914 connection with the ~~[solicitation]~~ procurement or award of a contract;

(b) a person who is subject to a suspension or debarment proceeding; and

(c) a contractor, for any cause of action ~~[which]~~ that arises under, or ~~[by virtue of]~~ in relation to a contract.

(2) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Section 186. Section **63G-6a-1804**, which is renumbered from Section 63G-6-817 is renumbered and amended to read:

~~[63G-6-817].~~ **63G-6a-1804. Statutes of limitations.**

(1) ~~[Any]~~ An action under Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(a) shall be initiated ~~[as follows]:~~

(a) within 20 ~~[calendar]~~ days after the day on which the aggrieved person knows or should have known of the facts giving rise to the action; ~~[provided, however, that an action]~~

(b) with respect to an invitation for bids or request for proposals ~~[shall be initiated prior to]~~, before the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action ~~[prior to bid opening or the closing date for proposals];~~ or

~~[(b)]~~ (c) within 14 ~~[calendar]~~ days after receipt of a final administrative decision pursuant to either Section ~~[63G-6-806 or Section 63G-6-813]~~ 63G-6a-1604 or 63G-6a-1708, whichever is applicable.

(2) ~~[Any]~~ An action under Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(b) shall be commenced within six months after receipt of a final administrative decision, pursuant to Section ~~[63G-6-806 or Section 63G-6-813, whichever is applicable]~~ 63G-6a-1604 or 63G-6a-1708.

(3) The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(c), except notice of appeals from ~~[the Procurement Appeals Board]~~ an appeals

6943 board pursuant to Section [~~63G-6-814~~] 63G-6a-1802 concerning actions on a contract or for
6944 breach of contract, shall be filed within one year after the [~~date of the Procurement Appeals~~
6945 ~~Board decision~~] day on which the decision of the appeals board is made.

6946 Section 187. Section **63G-6a-1805**, which is renumbered from Section 63G-6-816 is
6947 renumbered and amended to read:

6948 **[~~63G-6-816~~]. 63G-6a-1805. Affect of prior determination by agents of**
6949 **state.**

6950 In any judicial action under Section [~~63G-6-815~~] 63G-6a-1803, determinations by
6951 employees, agents, or other persons appointed by the state shall be final and conclusive only as
6952 provided in Sections [~~63G-6-419 and 63G-6-806~~] 63G-6a-1604 and 63G-6a-1902, and
6953 Subsection [~~63G-6-813~~] 63G-6a-1708(2).

6954 Section 188. Section **63G-6a-1901** is enacted to read:

6955 **Part 19. General Provisions Related to Protest or Appeal**

6956 **63G-6a-1901. Title.**

6957 This part is known as "General Provisions Related to Protest or Appeal."

6958 Section 189. Section **63G-6a-1902**, which is renumbered from Section 63G-6-419 is
6959 renumbered and amended to read:

6960 **[~~63G-6-419~~]. 63G-6a-1902. Determinations final except when arbitrary**
6961 **and capricious.**

6962 The determinations required [~~by Subsections 63G-6-401(6), 63G-6-408(1) and (6),~~
6963 ~~Sections 63G-6-410, 63G-6-411, 63G-6-413, Subsection 63G-6-415(4), Section 63G-6-416,~~
6964 ~~and Subsection 63G-6-417(2)] under the following provisions are final and conclusive unless
6965 they are arbitrary and capricious or clearly erroneous[:];~~

6966 (1) Section 63G-6a-605;

6967 (2) Section 63G-6a-702;

6968 (3) Subsection 63G-6a-708(1)(a);

6969 (4) Subsection 63G-6a-709(1);

6970 (5) Section 63G-6a-803;

- 6971 (6) Section 63G-6a-804;
6972 (7) Section 63G-6a-903;
6973 (8) Subsection 63G-6a-1204(1) or (2);
6974 (9) Subsection 63G-6a-1204(5);
6975 (10) Section 63G-6a-1205; or
6976 (11) Subsection 63G-6a-1206(5).

6977 Section 190. Section **63G-6a-1903**, which is renumbered from Section 63G-6-818 is
6978 renumbered and amended to read:

6979 **~~[63G-6-818].~~ 63G-6a-1903. Affect of violation prior to award of contract.**

6980 If ~~[prior to]~~, before award of a contract, it is determined administratively or upon
6981 administrative or judicial review that a ~~[solicitation]~~ procurement or proposed award of a
6982 contract is in violation of law, the ~~[solicitation]~~ procurement or proposed award shall be
6983 cancelled or revised to comply with the law.

6984 Section 191. Section **63G-6a-1904**, which is renumbered from Section 63G-6-819 is
6985 renumbered and amended to read:

6986 **~~[63G-6-819].~~ 63G-6a-1904. Affect of violation after award of contract.**

6987 If, after ~~[an]~~ award of a contract, it is determined administratively or upon
6988 administrative or judicial review that a ~~[solicitation]~~ procurement or award of a contract is in
6989 violation of law:

6990 (1) if the person awarded the contract ~~[has not acted]~~ did not act fraudulently or in bad
6991 faith:

6992 (a) the contract may be ratified and affirmed if it is ~~[determined that doing so is]~~ in the
6993 best interests of the state; or

6994 (b) (i) the contract may be terminated; and

6995 (ii) the person awarded the contract shall be compensated for the actual expenses
6996 reasonably incurred under the contract ~~[prior to]~~ before the termination, plus a reasonable
6997 profit;

6998 (2) if the person awarded the contract has acted fraudulently or in bad faith:

6999 (a) the contract may be declared null and void; or
7000 (b) the contract may be ratified and affirmed if ~~[such action]~~ it is in the best interests of
7001 the state, without prejudice to the state's rights to any appropriate damages.

7002 Section 192. Section **63G-6a-1905**, which is renumbered from Section 63G-6-820 is
7003 renumbered and amended to read:

7004 ~~[63G-6-820].~~ **63G-6a-1905. Interest rate.**

7005 (1) Except as provided in Subsection (2), in controversies between the state and
7006 contractors under this part, Part 16, Controversies and Protests, Part 17, Procurement Appeals
7007 Board, or Part 18, Appeals to Court and Court Proceedings, interest on amounts ultimately
7008 determined to be due to a contractor or ~~[to]~~ the state are payable at the rate applicable to
7009 judgments from the date the claim arose through the date of decision or judgment, whichever is
7010 later.

7011 (2) This section does not apply to public assistance benefits programs.

7012 Section 193. Section **63G-6a-2001** is enacted to read:

7013 **Part 20. Records**

7014 **63G-6a-2001. Title.**

7015 This part is known as "Records."

7016 Section 194. Section **63G-6a-2002**, which is renumbered from Section 63G-6-106 is
7017 renumbered and amended to read:

7018 ~~[63G-6-106].~~ **63G-6a-2002. Records -- Retention.**

7019 (1) All procurement records shall be retained and disposed of in accordance with Title
7020 63G, Chapter 2, Government Records Access and Management Act.

7021 (2) Written determinations required by this chapter shall ~~[also]~~ be retained in the
7022 appropriate official contract file of ~~[the Division of Purchasing and General Services or the~~
7023 ~~purchasing agency]~~:

7024 (a) the division;

7025 (b) the state purchasing unit; or

7026 (c) for a non-executive state procurement unit, the person designated by rule made by

7027 the applicable rulemaking authority.

7028 (3) A public procurement unit shall keep, and make available to the public, upon
7029 request, a written record of all procurements made under this section for which an expenditure
7030 of \$50 or more is made, for the longer of:

7031 (a) four years;

7032 (b) the time otherwise required by law; or

7033 (c) the time period provided by rule made by the applicable rulemaking authority.

7034 (4) The written record described in Subsection (3) shall include:

7035 (a) the name of the provider from whom the procurement was made;

7036 (b) a description of the procurement item;

7037 (c) the date of the procurement; and

7038 (d) the expenditure made for the procurement.

7039 Section 195. Section **63G-6a-2003**, which is renumbered from Section 63G-6-421 is
7040 renumbered and amended to read:

7041 **[63G-6-421]. 63G-6a-2003. Records of contracts made -- Audits --**
7042 **Contract requirements.**

7043 The ~~[chief]~~ procurement officer or the head of ~~[a purchasing agency]~~ an authorized
7044 purchasing entity shall maintain a record listing all contracts made under Section ~~[63G-6-410~~
7045 ~~or 63G-6-411 and shall maintain the record]~~ 63G-6a-408, 63G-6a-802, or 63G-6a-803, in
7046 accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
7047 The record shall contain each contractor's name, the amount and type of each contract, and a
7048 listing of the ~~[supplies, services, or construction procured under each contract]~~ procurement
7049 items to which the contract relates.

7050 Section 196. Section **63G-6a-2004**, which is renumbered from Section 63G-6-905 is
7051 renumbered and amended to read:

7052 **[63G-6-905]. 63G-6a-2004. Chief procurement officer's collection of**
7053 **information on procurement items.**

7054 (1) To the extent possible, the chief procurement officer may collect information

7055 concerning the type, cost, quality, and quantity of commonly used ~~[supplies, services, or~~
7056 ~~construction being]~~ procurement items procured or used by ~~[state]~~ public procurement units
7057 ~~[and local public procurement units]~~.

7058 (2) The chief procurement officer may make the information described in Subsection
7059 (1) available to any public procurement unit upon request.

7060 Section 197. Section **63G-6a-2101** is enacted to read:

7061 **Part 21. Interaction Between Public Procurement Units**

7062 **63G-6a-2101. Title.**

7063 This part is known as "Interaction Between Public Procurement Units."

7064 Section 198. Section **63G-6a-2102**, which is renumbered from Section 63G-6-901 is
7065 renumbered and amended to read:

7066 ~~[63G-6-901].~~ **63G-6a-2102. Agreements between public procurement**
7067 **units.**

7068 ~~[Under the terms agreed upon among the parties, any]~~

7069 (1) For purposes of this section only, "public procurement unit" includes an external
7070 procurement unit.

7071 (2) A public procurement unit may enter into ~~[agreements]~~ an agreement with one or
7072 more other public procurement units to:

7073 ~~[(1)]~~ (a) sponsor, conduct, or administer a cooperative agreement for the procurement
7074 or disposal of ~~[any supplies, services, or construction]~~ a procurement item;

7075 ~~[(2)]~~ (b) cooperatively use ~~[supplies or services]~~ a procurement item;

7076 ~~[(3)]~~ (c) commonly use or share warehousing facilities, capital equipment, and other
7077 facilities;

7078 ~~[(4)]~~ (d) provide personnel~~[- provided that the requesting]~~, if the receiving public
7079 procurement unit ~~[shall pay]~~ pays the public procurement unit providing the personnel the
7080 direct and indirect cost of providing the personnel, in accordance with the agreement; or

7081 ~~[(5)]~~ (e) make available informational, technical, and other services, ~~[provided that]~~ if:
7082 (i) the requirements of the public procurement unit tendering the services ~~[shall]~~ have

precedence over the ~~[requesting]~~ public procurement unit that receives the services; and ~~[that]~~

(ii) the ~~[requesting]~~ receiving public procurement unit ~~[shall pay for]~~ pays the expenses of the services ~~[so]~~ provided, in accordance with the agreement.

(3) If a public procurement unit does not have the expertise necessary to administer a particular procurement, the public procurement unit may enter into an agreement for administration of the procurement with:

(a) another public procurement unit; or

(b) a person that is under contract to administer procurements.

Section 199. Section **63G-6a-2103**, which is renumbered from Section 63G-6-902 is renumbered and amended to read:

~~[63G-6-902].~~ **63G-6a-2103. Services between public procurement units.**

(1) Upon request, ~~[any]~~ a public procurement unit may make services available to ~~[other]~~ another public procurement ~~[units the following services, among others]~~ unit, including:

(a) standard forms;

(b) printed manuals;

(c) qualified products lists;

(d) source information;

(e) common use commodities listings;

(f) supplier prequalification information;

(g) supplier performance ratings;

(h) debarred and suspended bidders lists;

(i) forms for invitation for bids, requests for proposals, instructions to bidders, general contract provisions, and ~~[other]~~ contract forms; ~~[and]~~ or

(j) contracts or published summaries ~~[thereof]~~ of contracts, including price and time of delivery information.

(2) ~~[Any]~~ A public procurement unit may provide ~~[the following]~~ technical services[;] ~~[among others, to other]~~ to another public procurement ~~[units;]~~ unit, including:

(a) development of specifications;

7111 (b) development of quality assurance test methods, including receiving, inspection, and
7112 acceptance procedures;

7113 (c) use of testing and inspection facilities; ~~[and]~~ or

7114 (d) use of personnel training programs.

7115 (3) Public procurement units may enter into contractual arrangements and publish a
7116 schedule of fees for the services provided under Subsections (1) and (2).

7117 Section 200. Section **63G-6a-2104**, which is renumbered from Section 63G-6-904 is
7118 renumbered and amended to read:

7119 ~~[63G-6-904].~~ **63G-6a-2104. Compliance by one public procurement unit**
7120 **pursuant to agreement considered compliance by others to agreement.**

7121 ~~[Where the]~~ (1) When a public procurement unit [administering] that administers a
7122 cooperative purchase complies with the requirements of this chapter, any public procurement
7123 unit participating in [such a] the purchase [shall be] is considered to have complied with this
7124 chapter. [Public procurement units]

7125 (2) A public procurement unit may not enter into a cooperative purchasing agreement
7126 for the purpose of circumventing this chapter.

7127 Section 201. Section **63G-6a-2105**, which is renumbered from Section 63G-6-424 is
7128 renumbered and amended to read:

7129 ~~[63G-6-424].~~ **63G-6a-2105. Participation of counties, municipalities, and**
7130 **public procurement units in agreements or contracts of public procurement units.**

7131 ~~[Utah counties, municipalities, and local public procurement units]~~

7132 (1) A Utah county or municipality may purchase [from] under or otherwise participate
7133 in [state public procurement unit agreements and contracts.] an agreement or contract of a Utah
7134 public procurement unit.

7135 (2) A state purchasing unit or a Utah public procurement unit may:

7136 (a) contract with the federal government without going through a procurement process
7137 or an exception to a procurement process;

7138 (b) purchase under, or otherwise participate in, an agreement or contract of another

7139 Utah public procurement unit; or
7140 (c) purchase under, or otherwise participate in, an agreement or contract of an external
7141 public procurement unit, if:
7142 (i) the procurement was conducted in accordance with the requirements of this chapter;
7143 and
7144 (ii) the Utah participating addendum to the contract contains the terms and conditions
7145 required by the applicable rulemaking authority that enters into the Utah participating
7146 addendum.
7147 (3) A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public
7148 Transit District Act, may, without going through a procurement process or an exception to a
7149 procurement process, contract with a county or municipality to receive money from the county
7150 or municipality to fund a transportation project.

7151 Section 202. Section **63G-6a-2201** is enacted to read:

7152 **Part 22. Ethical Requirements**

7153 **63G-6a-2201. Title.**

7154 This part is known as "Ethical Requirements."

7155 Section 203. Section **63G-6a-2202** is enacted to read:

7156 **63G-6a-2202. Ethical requirements for public procurement.**

7157 (1) As used in this section, "ethics provisions of the model procurement code" means
7158 the following provisions of Article 12 of the 2000 American Bar Association Model
7159 Procurement Code for State and Local Governments:

- 7160 (a) Section 12-202, General Standards of Ethical Conduct;
7161 (b) Section 12-204, Employee Conflict of Interest;
7162 (c) Section 12-205, Employee Disclosure Requirements;
7163 (d) Section 12-206, Gratuities and Kickbacks;
7164 (e) Section 12-207, Prohibition Against Contingent Fees;
7165 (f) Section 12-208, Restrictions on Employment of Present and Former Employees;
7166 and

- 7167 (g) Section 12-209, Use of Confidential Information.
7168 (2) The applicable rulemaking authority shall make rules that prescribe ethical
7169 standards for its agents and employees in relation to a procurement.
7170 (3) The ethical standards described in Subsection (2) shall be based upon the general
7171 principles of the ethics provisions of the model procurement code.
7172 (4) The applicable rulemaking authority:
7173 (a) is not required to adopt or implement any of the specific provisions of the ethics
7174 provisions of the model procurement code; and
7175 (b) may not adopt any provision of the ethics provisions of the model procurement
7176 code that conflict with this chapter.
7177 (5) A public procurement unit shall advise its employees and agents who are involved
7178 in a procurement process for the public procurement unit regarding the following provisions
7179 and the penalties associated with those provisions:
7180 (a) the provisions of this part and rules made under this part;
7181 (b) Subsections 63G-6a-408(4) and (5), relating to artificially dividing a procurement;
7182 (c) Section 63G-6a-2303, Offering a gratuity;
7183 (d) Section 63G-6a-2304, Accepting or requesting a gratuity;
7184 (e) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
7185 (f) Section 76-8-103, Bribery or offering a bribe;
7186 (g) Section 76-8-105, Receiving or soliciting bribe or bribery by public servant; and
7187 (h) Section 76-8-402, Misusing public money.

7188 Section 204. Section **63G-6a-2301** is enacted to read:

7189 **Part 23. Unlawful Conduct and Penalties**

7190 **63G-6a-2301. Title.**

7191 This part is known as "Unlawful Conduct and Penalties."

7192 Section 205. Section **63G-6a-2302**, which is renumbered from Section 63G-6-420 is
7193 renumbered and amended to read:

7194 **[63G-6-420]. 63G-6a-2302. Factual information to attorney general if**

7195 **collusion suspected.**

7196 ~~[When for any reason]~~ If a public procurement unit suspects collusion or other
7197 anticompetitive practices ~~[are suspected]~~ among bidders or offerors, the public procurement
7198 unit shall transmit a notice of the relevant facts ~~[shall be transmitted]~~ to the attorney general.

7199 Section 206. Section **63G-6a-2303** is enacted to read:

7200 **63G-6a-2303. Offering a gratuity.**

7201 (1) As used in this section, "interested person" means a person who is interested in any
7202 way in the sale of a procurement item, real property, or insurance to a public procurement unit.

7203 (2) Except as provided in Subsection (5), it is unlawful for an interested person to give,
7204 offer, or promise to give an emolument, gratuity, contribution, loan, or reward to:

7205 (a) a procurement officer of the public procurement unit that is seeking to obtain the
7206 procurement item;

7207 (b) any employee, official, or agent of the public procurement unit that is seeking to
7208 obtain the procurement item; or

7209 (c) another person or entity on behalf of a person described in Subsection (2)(a) or (b).

7210 (3) The conduct described in Subsection (2) is unlawful, regardless of whether the
7211 emolument, gratuity, contribution, loan, or reward is given for:

7212 (a) the person's own use; or

7213 (b) the use or benefit of any other person.

7214 (4) A person who violates this section is guilty of:

7215 (a) a felony of the second degree if the total value of the emolument, gratuity,
7216 contribution, loan, or reward is \$1,000 or more;

7217 (b) a felony of the third degree if the total value of the emolument, gratuity,
7218 contribution, loan, or reward is \$250 or more, but less than \$1,000;

7219 (c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan,
7220 or reward is \$100 or more, but less than \$250; or

7221 (d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan,
7222 or reward is less than \$100.

7223 (5) A person is not guilty of a violation of this section if:
7224 (a) (i) the gift is an item of less than \$10 in value;
7225 (ii) the total value of all gifts given by the person to a person described in Subsection
7226 (2), or another person in that person's behalf, during that calendar year does not exceed \$50;
7227 and

7228 (iii) the gift is not given with the intent to induce a person to make a procurement
7229 decision in reciprocation for the gift; or

7230 (b) the gift:
7231 (i) is a philanthropic donation to a public procurement unit; and
7232 (ii) is not given with the intent to induce a person to make a procurement decision in
7233 reciprocation for the gift.

7234 Section 207. Section **63G-6a-2304** is enacted to read:

7235 **63G-6a-2304. Accepting or requesting a gratuity.**

7236 (1) As used in this section, "associate" means any of the following:

7237 (a) the chief procurement officer;
7238 (b) a procurement officer;
7239 (c) a public employee;
7240 (d) a public official; or
7241 (e) an agent of a public procurement unit.

7242 (2) Except as provided in Subsection (4), it is unlawful for an associate of a public
7243 procurement unit that is engaged in obtaining a procurement item, real property, or insurance to
7244 ask, receive, offer to receive, accept, or ask for a promise to receive, an emolument, gratuity,
7245 contribution, loan, or reward for the associate's own use or benefit, or the use or benefit of any
7246 other person interested in the procurement item, real property, or insurance.

7247 (3) A person who violates this section is guilty of:

7248 (a) a felony of the second degree if the total value of the emolument, gratuity,
7249 contribution, loan, or reward is \$1,000 or more;

7250 (b) a felony of the third degree if the total value of the emolument, gratuity,

7251 contribution, loan, or reward is \$250 or more, but less than \$1,000;

7252 (c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan,
7253 or reward is \$100 or more, but less than \$250; or

7254 (d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan,
7255 or reward is less than \$100.

7256 (4) A person is not guilty of a violation of this section if:

7257 (a) (i) the associate receives a gift of less than \$10 in value;

7258 (ii) the total value of all gifts received by the associate from the same person during
7259 that calendar year does not exceed \$50; and

7260 (iii) the associate does not make a procurement decision, or intend to make a
7261 procurement decision, in reciprocation for the gift; or

7262 (b) the associate:

7263 (i) receives a philanthropic donation on behalf of a public procurement unit; and

7264 (ii) does not make a procurement decision, or intend to make a procurement decision,
7265 in reciprocation for the donation.

7266 Section 208. Section **63G-6a-2305** is enacted to read:

7267 **63G-6a-2305. Penalties for artificially dividing a purchase.**

7268 A person who violates Subsection 63G-6a-408(4) or (5) is guilty of:

7269 (1) a felony of the second degree if the total value of the divided procurements is
7270 \$1,000,000 or more;

7271 (2) a felony of the third degree if the total value of the divided procurements is
7272 \$250,000 or more, but less than \$1,000,000;

7273 (3) a class A misdemeanor if the total value of the divided procurements is \$100,000 or
7274 more, but less than \$250,000; or

7275 (4) a class B misdemeanor if the total value of the divided procurements is less than
7276 \$100,000.

7277 Section 209. Section **63G-6a-2306** is enacted to read:

7278 **63G-6a-2306. Penalties.**

(1) Except as provided in Subsection (2), in addition to any penalty contained in any other provision of law, a public officer or public employee who intentionally violates a provision of Section 63G-6a-2303, Section 63G-6a-2304, or Section 63G-6a-2305 shall be dismissed from employment or removed from office.

(2) An elected official who intentionally violates a provision of Section 63G-6a-2303, Section 63G-6a-2304, or Section 63G-6a-2305 may only be removed from office in accordance with the requirements of law relating to removal of the elected official from office.

(3) Except as provided in Subsection (4), a public officer or public employee who intentionally violates a provision of this chapter, including Part 22, Ethical Requirements, is subject to disciplinary action, up to and including dismissal from employment or dismissal from office.

(4) An elected official who intentionally violates a provision of this chapter, including Part 22, Ethical Requirements, may only be disciplined or removed from office in accordance with the requirements of law relating to discipline of the elected official or removal of the elected official from office.

Section 210. Section **63G-6a-2307** is enacted to read:

63G-6a-2307. Contract awarded in relation to criminal conduct void.

If a person who is awarded a contract intentionally violates a provision of Section 63G-6a-2303 or Section 63G-6a-2304 in relation to the contract, the contract is void and unenforceable.

Section 211. Section **63G-7-804** is amended to read:

63G-7-804. Liability insurance -- Methods for purchase or renewal.

(1) Except as provided in Subsection (2), a contract or policy of insurance may be purchased or renewed under this chapter only upon public bid to be let to the lowest and best bidder.

(2) The purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

Section 212. Section **63G-10-403** is amended to read:

63G-10-403. Department of Transportation bid or request for proposals protest settlement agreement approval and review.

(1) As used in this section:

(a) "Department" means the Department of Transportation created in Section 72-1-201.

(b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.

(2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

(3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Section ~~[63G-6-801]~~ 63G-6a-1603, that might cost government entities more than \$100,000 to implement shall be presented to the Transportation Commission for approval or rejection.

(4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Section ~~[63G-6-801]~~ 63G-6a-1603, that might cost government entities more than \$500,000 to implement shall be presented:

(a) to the Transportation Commission for approval or rejection; and

(b) to the governor for approval or rejection.

(5) (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Section ~~[63G-6-801]~~ 63G-6a-1603, that might cost government entities more than \$1,000,000 to implement shall be presented:

(i) to the Transportation Commission for approval or rejection;

(ii) to the governor for approval or rejection; and

(iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.

(b) The Legislative Management Committee may recommend approval or rejection of

7335 the settlement agreement.

7336 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
7337 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7338 cost government entities more than \$100,000 to implement until the Transportation
7339 Commission has approved the agreement.

7340 (b) The department may not enter into a settlement agreement that resolves a bid or
7341 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7342 cost government entities more than \$500,000 to implement until the Transportation
7343 Commission and the governor have approved the agreement.

7344 (c) The department may not enter into a settlement agreement that resolves a bid or
7345 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7346 cost government entities more than \$1,000,000 to implement until:

- 7347 (i) the Transportation Commission has approved the agreement;
7348 (ii) the governor has approved the agreement; and
7349 (iii) the Legislative Management Committee has reviewed the agreement.

7350 Section 213. Section **63H-2-504** is amended to read:

7351 **63H-2-504. Relation to other state statutes.**

7352 (1) The authority is subject to review by the Retirement and Independent Entities
7353 Committee in accordance with Title 63E, Chapter 1, Independent Entities Act.

7354 (2) The authority is subject to:

- 7355 (a) Title 51, Chapter 5, Funds Consolidation Act;
7356 (b) Title 51, Chapter 7, State Money Management Act;
7357 (c) Title 52, Chapter 4, Open and Public Meetings Act;
7358 (d) Title 63A, Utah Administrative Services Code;
7359 (e) Title 63G, Chapter 2, Government Records Access and Management Act;
7360 (f) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
7361 (g) Title 63G, Chapter 4, Administrative Procedures Act;
7362 (h) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

- 7363 (i) Title 63J, Chapter 1, Budgetary Procedures Act;
7364 (j) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
7365 (k) Title 67, Chapter 19, Utah State Personnel Management Act.
7366 Section 214. Section **63H-3-109** is amended to read:
7367 **63H-3-109. Relation to certain acts.**
7368 (1) The authority is exempt from:
7369 (a) Title 51, Chapter 5, Funds Consolidation Act;
7370 (b) Title 63A, Chapter 1, Department of Administrative Services;
7371 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;
7372 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
7373 (e) Title 67, Chapter 19, Utah State Personnel Management Act.
7374 (2) The authority is subject to audit by:
7375 (a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and
7376 (b) the legislative auditor general pursuant to Section 36-12-15.
7377 (3) The authority shall annually report to the Retirement and Independent Entities
7378 Committee created under Section 63E-1-201 concerning the authority's implementation of this
7379 part.
7380 Section 215. Section **63H-4-108** is amended to read:
7381 **63H-4-108. Relation to certain acts.**
7382 (1) The authority is exempt from:
7383 (a) Title 51, Chapter 5, Funds Consolidation Act;
7384 (b) Title 63A, Utah Administrative Services Code;
7385 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;
7386 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
7387 (e) Title 67, Chapter 19, Utah State Personnel Management Act.
7388 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,
7389 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.
7390 Section 216. Section **63H-5-108** is amended to read:

7391 **63H-5-108. Relation to certain acts.**

7392 (1) The authority is exempt from:

7393 (a) Title 51, Chapter 5, Funds Consolidation Act;

7394 (b) Title 63A, Chapter 1, Department of Administrative Services;

7395 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

7396 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

7397 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

7398 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,

7399 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

7400 Section 217. Section **63H-6-103** is amended to read:

7401 **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**

7402 (1) There is created an independent public nonprofit corporation known as the "Utah
7403 State Fair Corporation."

7404 (2) The board shall file articles of incorporation for the corporation with the Division
7405 of Corporations and Commercial Code.

7406 (3) The corporation, subject to this chapter, has all powers and authority permitted
7407 nonprofit corporations by law.

7408 (4) The corporation shall, subject to approval of the board:

7409 (a) have general management, supervision, and control over all activities relating to the
7410 state fair and have charge of all state expositions except as otherwise provided by statute;

7411 (b) for public entertainment, displays, and exhibits or similar events:

7412 (i) provide, sponsor, or arrange the events;

7413 (ii) publicize and promote the events; and

7414 (iii) secure funds to cover the cost of the exhibits from:

7415 (A) private contributions;

7416 (B) public appropriations;

7417 (C) admission charges; and

7418 (D) other lawful means;

7419 (c) establish the time, place, and purpose of state expositions; and
7420 (d) acquire and designate exposition sites.

7421 (5) (a) The corporation shall:

7422 (i) use generally accepted accounting principals in accounting for its assets, liabilities,
7423 and operations;

7424 (ii) seek corporate sponsorships for the state fair park and for individual buildings or
7425 facilities within the fair park;

7426 (iii) work with county and municipal governments, the Salt Lake Convention and
7427 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote
7428 expositions and the use of the state fair park;

7429 (iv) develop and maintain a marketing program to promote expositions and the use of
7430 the state fair park;

7431 (v) in cooperation with the Division of Facilities Construction and Management,
7432 maintain the physical appearance and structural integrity of the state fair park and the buildings
7433 located at the state fair park;

7434 (vi) hold an annual exhibition that:

7435 (A) is called the state fair or a similar name;

7436 (B) includes expositions of livestock, poultry, agricultural, domestic science,
7437 horticultural, floricultural, mineral, and industrial products, manufactured articles, and
7438 domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial,
7439 artistic, and educational pursuits and the sharing of talents among the people of Utah;

7440 (C) includes the award of premiums for the best specimens of the exhibited articles and
7441 animals;

7442 (D) permits competition by livestock exhibited by citizens of other states and territories
7443 of the United States; and

7444 (E) is arranged according to plans approved by the board;

7445 (vii) fix the conditions of entry to the exposition described in Subsection (5)(a)(vi); and
7446 (viii) publish a list of premiums that will be awarded at the exhibition described in

7447 Subsection (5)(a)(vi) for the best specimens of exhibited articles and animals.

7448 (b) In addition to the state fair to be held in accordance with Subsection (5)(a)(vi), the
7449 corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science,
7450 horticultural, floricultural, mineral, and industrial products, manufactured articles, and
7451 domestic animals that, in its opinion, will best stimulate agricultural, industrial, artistic, and
7452 educational pursuits and the sharing of talents among the people of Utah.

7453 (6) The corporation may:

7454 (a) employ advisers, consultants, and agents, including financial experts and
7455 independent legal counsel, and fix their compensation;

7456 (b) procure insurance against any loss in connection with its property and other assets,
7457 including mortgage loans;

7458 (c) receive and accept aid or contributions of money, property, labor, or other things of
7459 value from any source, including any grants or appropriations from any department, agency, or
7460 instrumentality of the United States or Utah;

7461 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the
7462 purposes of the corporation, subject to the conditions, if any, upon which the aid and
7463 contributions were made;

7464 (e) enter into management agreements with any person or entity for the performance of
7465 its functions or powers;

7466 (f) establish whatever accounts and procedures as necessary to budget, receive, and
7467 disburse, account for, and audit all funds received, appropriated, or generated;

7468 (g) enter into agreements for the leasing of any of the facilities at the state fair park, if
7469 approved by the board; and

7470 (h) sponsor events as approved by the board.

7471 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the
7472 corporation is exempt from:

7473 (i) Title 51, Chapter 5, Funds Consolidation Act;

7474 (ii) Title 51, Chapter 7, State Money Management Act;

- 7475 (iii) Title 63A, Utah Administrative Services Code;
7476 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code;
7477 (v) Title 63J, Chapter 1, Budgetary Procedures Act; and
7478 (vi) Title 67, Chapter 19, Utah State Personnel Management Act.
- 7479 (b) The board shall adopt policies parallel to and consistent with:
7480 (i) Title 51, Chapter 5, Funds Consolidation Act;
7481 (ii) Title 51, Chapter 7, State Money Management Act;
7482 (iii) Title 63A, Utah Administrative Services Code;
7483 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code; and
7484 (v) Title 63J, Chapter 1, Budgetary Procedures Act.
- 7485 (c) The corporation shall comply with the legislative approval requirements for new
7486 facilities established in Subsection 63A-5-104(3).
- 7487 Section 218. Section **63I-1-263** is amended to read:
7488 **63I-1-263. Repeal dates, Titles 63A to 63M.**
- 7489 (1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to
7490 any public school district which chooses to participate, is repealed July 1, 2016.
- 7491 (2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.
- 7492 (3) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.
- 7493 (4) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is
7494 repealed July 1, 2014.
- 7495 (5) Subsection [~~63G-6-502(5)(b)(ii)~~] 63G-6a-1402(7) authorizing certain transportation
7496 agencies to award a contract for a design-build transportation project in certain circumstances,
7497 is repealed July 1, 2015.
- 7498 (6) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
7499 2020.
- 7500 (7) The Resource Development Coordinating Committee, created in Section
7501 63J-4-501, is repealed July 1, 2015.
- 7502 (8) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

(9) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2012.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2012; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2012.

(d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2011; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2011.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

(11) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is repealed July 1, 2011.

(12) Title 63M, Chapter 9, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2016.

(13) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2012.

Section 219. Section **63M-1-2602** is amended to read:

63M-1-2602. Definitions.

As used in this part:

- 7531 (1) "Affected department" means, as applicable, the Board of Education or the
7532 Department of Technology Services.
- 7533 (2) "Board" means the Board of Business and Economic Development created under
7534 Section 63M-1-301.
- 7535 (3) "Board of Education" means the Utah State Board of Education.
- 7536 (4) "Chief procurement officer" means the chief procurement officer appointed under
7537 Section ~~[63G-6-203]~~ 63G-6a-302.
- 7538 (5) "Committee" means the proposal review committee created under Section
7539 63M-1-2604.
- 7540 (6) "Day" means a calendar day.
- 7541 (7) "Director" is as defined in Section 63M-1-102.
- 7542 (8) "Executive Appropriations Committee" means the Legislature's Executive
7543 Appropriations Committee.
- 7544 (9) "Information technology" is as defined in Section 63F-1-102.
- 7545 (10) "Office" means the Governor's Office of Economic Development created under
7546 Section 63M-1-201.
- 7547 (11) "Private entity" means a person submitting a proposal under this part for the
7548 purpose of entering into a project.
- 7549 (12) "Project" means the subject of a proposal or an agreement for the procurement or
7550 disposal of:
- 7551 (a) information technology or telecommunications products or services; or
7552 (b) supplies or services for or on behalf of the Department of Technology Services or
7553 the Board of Education.
- 7554 (13) "Proposal" means an unsolicited offer by a private entity to undertake a project,
7555 including an initial proposal under Section 63M-1-2605 and a detailed proposal under Section
7556 63M-1-2608.
- 7557 (14) "Services" is as defined in Section ~~[63G-6-103]~~ 63G-6a-103.
- 7558 (15) "Supplies" is as defined in Section ~~[63G-6-103]~~ 63G-6a-103.

7559 (16) "Telecommunications" is as defined in Section 63F-1-102.

7560 Section 220. Section **63M-1-2603** is amended to read:

7561 **63M-1-2603. Government Procurement Private Proposal Program -- Proposals --**
7562 **Rulemaking.**

7563 (1) There is created within the office the Government Procurement Private Proposal
7564 Program.

7565 (2) In accordance with this part, the board may:

7566 (a) accept a proposal for a project;

7567 (b) solicit comments, suggestions, and modifications to a project in accordance with
7568 Section [~~63G-6-408.5~~] 63G-6a-711; and

7569 (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
7570 Rulemaking Act, establishing requirements, including time limits for any action required by the
7571 affected department, a directly affected state entity or school district, or the Governor's Office
7572 of Planning and Budget, for the procurement of a project to the extent not governed by Title
7573 63G, Chapter [6] 6a, Utah Procurement Code.

7574 Section 221. Section **63M-1-2605** is amended to read:

7575 **63M-1-2605. Initial proposal -- Requirements.**

7576 (1) In accordance with this part, a private entity may at any time submit to the
7577 committee an initial proposal for a project.

7578 (2) An initial proposal shall include:

7579 (a) a conceptual description of the project;

7580 (b) a description of the economic benefit of the project to the state and the affected
7581 department;

7582 (c) information concerning the products, services, and supplies currently being
7583 provided by the state, that are similar to the project;

7584 (d) an estimate of the following costs associated with the project:

7585 (i) design;

7586 (ii) implementation;

7587 (iii) operation and maintenance; and
7588 (iv) any other related project cost; and
7589 (e) the name and address of a person who may be contacted for further information
7590 concerning the initial proposal.

7591 (3) A private entity submitting an initial proposal under this section shall pay the fee
7592 required by Section 63M-1-2612 when the initial proposal is submitted.

7593 (4) An initial proposal submitted under this section is a protected record under Title
7594 63G, Chapter 2, Government Records Access and Management Act, until the chief
7595 procurement officer initiates a procurement process in accordance with Section [~~63G-6-408.5~~]
7596 63G-6a-711.

7597 (5) The board shall make rules in accordance with Title 63G, Chapter 3, Utah
7598 Administrative Rulemaking Act, detailing the portions of an initial proposal that remain
7599 protected after the chief procurement officer initiates a procurement process.

7600 Section 222. Section **63M-1-2606** is amended to read:

7601 **63M-1-2606. Review of initial proposal -- Affected department review.**

7602 (1) The committee shall review and evaluate an initial proposal submitted in
7603 accordance with:

7604 (a) this part; and

7605 (b) any rule established by the board under Section 63M-1-2603.

7606 (2) If the committee, in its sole discretion, determines to proceed with the project, the
7607 committee shall submit a copy of the initial proposal to:

7608 (a) the affected department; and

7609 (b) the Governor's Office of Planning and Budget.

7610 (3) (a) An affected department, directly affected state entity, and school district
7611 receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial
7612 proposal and provide the committee with any comment, suggestion, or modification to the
7613 project.

7614 (b) After receiving an initial proposal, the Governor's Office of Planning and Budget

7615 shall prepare an economic feasibility report containing:

7616 (i) information concerning the economic feasibility and effectiveness of the project
7617 based upon competent evidence;

7618 (ii) a dollar amount representing the total estimated fiscal impact of the project to the
7619 affected department and the state; and

7620 (iii) any other matter the committee requests or is required by the board by rule.

7621 (4) In reviewing an initial proposal, the affected department shall share the initial
7622 proposal with any other state entity or school district that will be directly affected if the
7623 proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.

7624 (5) If the committee determines to proceed with the project, the committee shall submit
7625 a copy of the initial proposal, including any comment, suggestion, or modification to the initial
7626 proposal, to:

7627 (a) the chief procurement officer in accordance with Section ~~63G-6-408.5~~

7628 63G-6a-711; and

7629 (b) the Executive Appropriations Committee, for informational purposes.

7630 (6) Before taking any action under Subsection (5), the committee shall consider:

7631 (a) any comment, suggestion, or modification to the initial proposal submitted in
7632 accordance with Subsection (3);

7633 (b) the extent to which the project is practical, efficient, and economically beneficial to
7634 the state and the affected department;

7635 (c) the economic feasibility report prepared by the Governor's Office of Planning and
7636 Budget; and

7637 (d) any other reasonable factor identified by the committee or required by the board by
7638 rule.

7639 Section 223. Section **63M-1-2607** is amended to read:

7640 **63M-1-2607. Acceptance of initial proposal -- Obtaining detailed proposals.**

7641 (1) If an initial proposal is accepted under Section 63M-1-2606, the chief procurement
7642 officer shall:

(a) take action under Section [~~63G-6-408.5~~] 63G-6a-711 to initiate a procurement process to obtain one or more detailed proposals using information from portions of the initial proposal that are not protected records under Title 63G, Chapter 2, Government Records [~~and~~] Access and Management Act;

(b) consult with the committee during the procurement process; and

(c) submit all detailed proposals that meet the guidelines established under Subsection 63M-1-2608(1), including the detailed proposal submitted by the private entity that submitted the initial proposal for the project, to:

(i) the committee; and

(ii) the Governor's Office of Planning and Budget.

(2) The office is considered the purchasing agency for a procurement process initiated under this part.

Section 224. Section **63M-1-2608** is amended to read:

63M-1-2608. Detailed proposal -- Requirements -- Cooperation of affected department.

(1) A detailed proposal submitted in response to a procurement process initiated under Section 63M-1-2607 shall include:

(a) a conceptual description of the project, including the scope of the work;

(b) a description of the economic benefit of the project to the state and the affected department;

(c) an estimate of the design, implementation, operation, maintenance, or other costs associated with the project;

(d) information concerning the information technology or telecommunication product and service or other supply or service currently provided by the state that is similar to the project being proposed, if applicable;

(e) a statement setting forth the private entity's general plan for financing the project, including any appropriation by the Legislature or other public money and, if applicable, the sources of the private entity's funds and identification of any dedicated revenue source or

7671 proposed debt or equity investment on behalf of the private entity;
7672 (f) the name and address of the person who may be contacted for further information
7673 concerning the detailed proposal;
7674 (g) a statement describing the private entity's experience with other similar projects and
7675 a description of why the private entity is best qualified for the project; and
7676 (h) any other information:
7677 (i) reasonably requested by the affected department or the committee, or required by
7678 the board by rule; or
7679 (ii) that the private entity considers necessary or appropriate to complete or describe
7680 the detailed proposal.
7681 (2) To assist each private entity in preparing a detailed proposal:
7682 (a) the affected department shall provide each private entity with access to all
7683 information, records, documents, and reports related to the proposal and the project that are
7684 designated public records under Title 63G, Chapter 2, Government Records Access and
7685 Management Act; and
7686 (b) the affected department and the committee shall cooperate with each private entity
7687 to assist the private entity in the development of a detailed proposal that is:
7688 (i) practical;
7689 (ii) efficient; and
7690 (iii) economically beneficial to the state and the affected department.
7691 (3) The committee or any private entity may choose to terminate the development of
7692 the detailed proposal at any time before the submission of the detailed proposal to the chief
7693 procurement officer under Section ~~[63G-6-408.5]~~ 63G-6a-711.
7694 Section 225. Section **63M-1-2610** is amended to read:
7695 **63M-1-2610. Project agreement.**
7696 (1) If the board accepts the detailed proposal, the director shall:
7697 (a) prepare a project agreement in consultation with the affected department and any
7698 other state entity directly impacted by the detailed proposal; and

- 7699 (b) enter into the project agreement with the private entity.
- 7700 (2) A project agreement shall be signed by the director, the affected department, a
- 7701 directly affected state entity or school district, and the private entity.
- 7702 (3) A project agreement shall include provisions concerning:
- 7703 (a) the scope of the project;
- 7704 (b) the pricing method of the project;
- 7705 (c) the director's or the state's ability to terminate for convenience or for default, and
- 7706 any termination compensation to be paid to the private entity, if applicable;
- 7707 (d) the ability to monitor performance under the project agreement;
- 7708 (e) the appropriate limits of liability;
- 7709 (f) the appropriate transition of services, if applicable;
- 7710 (g) the exceptions from applicable rules and procedures for the implementation and
- 7711 administration of the project by the affected department, if any;
- 7712 (h) the clauses and remedies applicable to state contracts under Title 63G, Chapter [6,
- 7713 ~~Part 6, Contract Clauses]~~ 6a, Part 12, Contracts and Change Orders; and
- 7714 (i) any other matter reasonably requested by the committee or required by the board by
- 7715 rule.
- 7716 (4) A copy of the signed project agreement shall be submitted to:
- 7717 (a) the affected department; and
- 7718 (b) the Executive Appropriations Committee.
- 7719 (5) A project agreement is considered a contract under Title 63G, Chapter [6] 6a, Utah
- 7720 Procurement Code.
- 7721 (6) The affected department shall implement and administer the project agreement in
- 7722 accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 7723 except as modified by the project agreement under Subsection (3)(g).
- 7724 Section 226. Section **64-13a-13** is amended to read:
- 7725 **64-13a-13. Purchases of material -- Exemption.**
- 7726 (1) The Division of Correctional Industries is exempt from the provisions of Title 63G,

7727 Chapter [6] 6a, Utah Procurement Code, in respect to goods or services purchased by or sold to
7728 the department.

7729 (2) The purchase of raw materials for use by the division in manufacturing or
7730 processing products for resale is exempt from the powers and duties of the state purchasing
7731 agent.

7732 Section 227. Section **67-16-4** is amended to read:

7733 **67-16-4. Improperly disclosing or using private, controlled, or protected**
7734 **information -- Using position to secure privileges or exemptions -- Accepting employment**
7735 **which would impair independence of judgment or ethical performance -- Exceptions.**

7736 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
7737 employee, or legislator, under circumstances not amounting to a violation of Section
7738 [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to:

7739 (a) accept employment or engage in any business or professional activity that he might
7740 reasonably expect would require or induce him to improperly disclose controlled information
7741 that he has gained by reason of his official position;

7742 (b) disclose or improperly use controlled, private, or protected information acquired by
7743 reason of his official position or in the course of official duties in order to further substantially
7744 the officer's or employee's personal economic interest or to secure special privileges or
7745 exemptions for himself or others;

7746 (c) use or attempt to use his official position to:

7747 (i) further substantially the officer's or employee's personal economic interest; or

7748 (ii) secure special privileges or exemptions for himself or others;

7749 (d) accept other employment that he might expect would impair his independence of
7750 judgment in the performance of his public duties; or

7751 (e) accept other employment that he might expect would interfere with the ethical
7752 performance of his public duties.

7753 (2) (a) Subsection (1) does not apply to the provision of education-related services to
7754 public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

(3) A county legislative body member who does not participate in the process of selecting a mental health or substance abuse service provider does not commit an offense under Subsection (1)(a) or (b) by:

(a) serving also as a member of the governing board of the provider of mental health or substance abuse services under contract with the county; or

(b) discharging, in good faith, the duties and responsibilities of each position.

Section 228. Section **67-16-5** is amended to read:

67-16-5. Accepting gift, compensation, or loan -- When prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section ~~[63G-6-1001]~~ 63G-6a-2304 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for official action taken; or

(c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection (2) does not apply to:

- 7783 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
7784 (b) an award publicly presented in recognition of public services;
7785 (c) any bona fide loan made in the ordinary course of business; or
7786 (d) a political campaign contribution.

7787 Section 229. Section **67-16-5.3** is amended to read:

7788 **67-16-5.3. Requiring donation, payment, or service to government agency in**
7789 **exchange for approval -- When prohibited.**

7790 (1) It is an offense for a public officer, public employee, or legislator, under
7791 circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105,
7792 to demand from any person as a condition of granting any application or request for a permit,
7793 approval, or other authorization, that the person donate personal property, money, or services to
7794 any agency.

7795 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
7796 an agency that is:

7797 (i) expressly required by statute, ordinance, or agency rule;

7798 (ii) mutually agreed to between the applicant and the entity issuing the permit,
7799 approval, or other authorization;

7800 (iii) made voluntarily by the applicant; or

7801 (iv) a condition of a consent decree, settlement agreement, or other binding instrument
7802 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

7803 (b) If a person donates property, funds, or services to an agency, the agency shall, as
7804 part of the permit or other written authorization:

7805 (i) identify that a donation has been made;

7806 (ii) describe the donation;

7807 (iii) certify, in writing, that the donation was voluntary; and

7808 (iv) place that information in its files.

7809 Section 230. Section **67-16-6** is amended to read:

7810 **67-16-6. Receiving compensation for assistance in transaction involving an**

7811 **agency -- Filing sworn statement.**

7812 (1) It is an offense for a public officer or public employee, under circumstances not
7813 amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to receive or
7814 agree to receive compensation for assisting any person or business entity in any transaction
7815 involving an agency unless the public officer or public employee files a sworn, written
7816 statement containing the information required by Subsection (2) with:

- 7817 (a) the head of the officer or employee's own agency;
7818 (b) the agency head of the agency with which the transaction is being conducted; and
7819 (c) the state attorney general.

7820 (2) The statement shall contain:

- 7821 (a) the name and address of the public officer or public employee involved;
7822 (b) the name of the public officer's or public employee's agency;
7823 (c) the name and address of the person or business entity being or to be assisted; and
7824 (d) a brief description of:
7825 (i) the transaction as to which service is rendered or is to be rendered; and
7826 (ii) the nature of the service performed or to be performed.

7827 (3) The statement required to be filed under Subsection (1) shall be filed within 10
7828 days after the date of any agreement between the public officer or public employee and the
7829 person or business entity being assisted or the receipt of compensation, whichever is earlier.

7830 (4) The statement is public information and shall be available for examination by the
7831 public.

7832 Section 231. Section **72-6-107** is amended to read:

7833 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**
7834 **Certain indemnification provisions forbidden.**

7835 (1) As used in this section, "design professional" means:

- 7836 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
7837 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
7838 Licensing Act; and

(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2) (a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.

(b) Except as provided in Section [~~63G-6-502~~] 63G-6a-1402 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.

(c) (i) The department:

(A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a period of two weeks ending no more than 10 days before bids are opened; and

(B) may publish an advertisement for bids in a newspaper of general circulation in the county in which the work is to be performed.

(ii) If the department publishes an advertisement for bids in a newspaper under Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for two consecutive weeks, with the last publication at least 10 days before bids are opened.

(d) The department shall receive sealed bids and open the bids at the time and place designated in the advertisement. The department may then award the contract but may reject any and all bids.

(e) If the department's estimates are substantially lower than any responsible bid received, the department may perform any work by force account.

(3) If any payment on a contract with a private contractor for construction or improvement of a state highway is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

(4) If the department performs a construction or improvement project by force account, the department shall:

(a) provide an accounting of the costs and expenditures of the improvement including

7867 material and labor;

7868 (b) disclose the costs and expenditures to any person upon request and allow the person
7869 to make a copy and pay for the actual cost of the copy; and

7870 (c) perform the work using the same specifications and standards that would apply to a
7871 private contractor.

7872 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7873 department shall establish procedures for:

7874 (a) hearing evidence that a region within the department violated this section; and

7875 (b) administering sanctions against the region if the region is found in violation.

7876 (6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing
7877 contract, entered into under authority of this chapter may not require that a design professional
7878 indemnify another from liability claims that arise out of the design professional's services,
7879 unless the liability claim arises from the design professional's negligent act, wrongful act, error
7880 or omission, or other liability imposed by law.

7881 (b) Subsection (6)(a) may not be waived by contract.

7882 (c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required
7883 to indemnify a person for whom the design professional has direct or indirect control or
7884 responsibility.

7885 Section 232. Section **72-6-107.5** is amended to read:

7886 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
7887 **insurance coverage.**

7888 (1) For purposes of this section:

7889 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
7890 34A-2-104 who:

7891 (i) works at least 30 hours per calendar week; and

7892 (ii) meets employer eligibility waiting requirements for health care insurance which
7893 may not exceed the first day of the calendar month following 90 days from the date of hire.

7894 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

- 7895 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.
- 7896 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
- 7897 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
- 7898 into by the department on or after July 1, 2009, for construction or design of highways and to a
- 7899 prime contractor or to a subcontractor in accordance with Subsection (2)(b).
- 7900 (b) (i) A prime contractor is subject to this section if the prime contract is in the
- 7901 amount of \$1,500,000 or greater.
- 7902 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
- 7903 \$750,000 or greater.
- 7904 (3) This section does not apply if:
- 7905 (a) the application of this section jeopardizes the receipt of federal funds;
- 7906 (b) the contract is a sole source contract; or
- 7907 (c) the contract is an emergency procurement.
- 7908 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
- 7909 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
- 7910 threshold required by Subsection (2).
- 7911 (b) A person who intentionally uses change orders or contract modifications to
- 7912 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 7913 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
- 7914 the contractor has and will maintain an offer of qualified health insurance coverage for the
- 7915 contractor's employees and the employees' dependents during the duration of the contract.
- 7916 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
- 7917 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
- 7918 health insurance coverage for the subcontractor's employees and the employees' dependents
- 7919 during the duration of the contract.
- 7920 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
- 7921 the duration of the contract is subject to penalties in accordance with administrative rules
- 7922 adopted by the department under Subsection (6).

7923 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
7924 requirements of Subsection (5)(b).

7925 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
7926 the duration of the contract is subject to penalties in accordance with administrative rules
7927 adopted by the department under Subsection (6).

7928 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
7929 requirements of Subsection (5)(a).

7930 (6) The department shall adopt administrative rules:

7931 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

7932 (b) in coordination with:

7933 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

7934 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

7935 (iii) the State Building Board in accordance with Section 63A-5-205;

7936 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

7937 (v) a public transit district in accordance with Section 17B-2a-818.5; and

7938 (vi) the Legislature's Administrative Rules Review Committee; and

7939 (c) which establish:

7940 (i) the requirements and procedures a contractor must follow to demonstrate to the
7941 department compliance with this section which shall include:

7942 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

7943 (b) more than twice in any 12-month period; and

7944 (B) that the actuarially equivalent determination required for qualified health insurance
7945 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
7946 division with a written statement of actuarial equivalency from either:

7947 (I) the Utah Insurance Department;

7948 (II) an actuary selected by the contractor or the contractor's insurer; or

7949 (III) an underwriter who is responsible for developing the employer group's premium
7950 rates;

7951 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
7952 violates the provisions of this section, which may include:

7953 (A) a three-month suspension of the contractor or subcontractor from entering into
7954 future contracts with the state upon the first violation;

7955 (B) a six-month suspension of the contractor or subcontractor from entering into future
7956 contracts with the state upon the second violation;

7957 (C) an action for debarment of the contractor or subcontractor in accordance with
7958 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

7959 (D) monetary penalties which may not exceed 50% of the amount necessary to
7960 purchase qualified health insurance coverage for an employee and a dependent of the employee
7961 of the contractor or subcontractor who was not offered qualified health insurance coverage
7962 during the duration of the contract; and

7963 (iii) a website on which the department shall post the benchmark for the qualified
7964 health insurance coverage identified in Subsection (1)(c).

7965 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
7966 subcontractor who intentionally violates the provisions of this section shall be liable to the
7967 employee for health care costs that would have been covered by qualified health insurance
7968 coverage.

7969 (ii) An employer has an affirmative defense to a cause of action under Subsection
7970 (7)(a)(i) if:

7971 (A) the employer relied in good faith on a written statement of actuarial equivalency
7972 provided by:

7973 (I) an actuary; or

7974 (II) an underwriter who is responsible for developing the employer group's premium
7975 rates; or

7976 (B) the department determines that compliance with this section is not required under
7977 the provisions of Subsection (3) or (4).

7978 (b) An employee has a private right of action only against the employee's employer to

7979 enforce the provisions of this Subsection (7).

7980 (8) Any penalties imposed and collected under this section shall be deposited into the
7981 Medicaid Restricted Account created in Section 26-18-402.

7982 (9) The failure of a contractor or subcontractor to provide qualified health insurance
7983 coverage as required by this section:

7984 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
7985 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
7986 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

7987 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
7988 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
7989 or construction.

7990 Section 233. Section **72-6-108** is amended to read:

7991 **72-6-108. Class B and C roads -- Improvement projects -- Contracts -- Retainage.**

7992 (1) A county executive for class B roads and the municipal executive for class C roads
7993 shall cause plans, specifications, and estimates to be made prior to the construction of any
7994 improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated
7995 cost for any one project exceeds the bid limit as defined in Section 72-6-109 for labor,
7996 equipment, and materials.

7997 (2) (a) All projects in excess of the bid limit shall be performed under contract to be let
7998 to the lowest responsible bidder.

7999 (b) If the estimated cost of the improvement project exceeds the bid limit for labor,
8000 equipment, and materials, the project may not be divided to permit the construction in parts,
8001 unless each part is done by contract.

8002 (3) (a) The advertisement on bids shall be published:

8003 (i) in a newspaper of general circulation in the county in which the work is to be
8004 performed at least once a week for three consecutive weeks; and

8005 (ii) in accordance with Section 45-1-101 for three weeks.

8006 (b) If there is no newspaper of general circulation as described in Subsection (3)(a)(I),

8007 the notice shall be posted for at least 20 days in at least five public places in the county.

8008 (4) The county or municipal executive or their designee shall receive sealed bids and
8009 open the bids at the time and place designated in the advertisement. The county or municipal
8010 executive or their designee may then award the contract but may reject any and all bids.

8011 (5) The person, firm, or corporation that is awarded a contract under this section is
8012 subject to the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

8013 (6) If any payment on a contract with a private contractor for construction or
8014 improvement of a class B or C road is retained or withheld, the payment shall be retained or
8015 withheld and released as provided in Section 13-8-5.

8016 Section 234. Section **72-6-205** is amended to read:

8017 **72-6-205. Solicited and unsolicited tollway development agreement proposals.**

8018 (1) In accordance with this section, the department may:

8019 (a) accept unsolicited tollway development agreement proposals; or

8020 (b) solicit tollway development agreement proposals for a proposed project.

8021 (2) The department shall solicit tollway development agreement proposals in
8022 accordance with Section [~~63G-6-503~~] 63G-6a-1403.

8023 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
8024 department and the commission shall establish rules and procedures for accepting unsolicited
8025 proposals that require the:

8026 (a) private entity that submits the unsolicited proposal to comply with the minimum
8027 requirements for tollway development agreement proposals under Section 72-6-204;

8028 (b) department to issue a request for competing proposals and qualifications that
8029 includes:

8030 (i) a description of the proposed tollway development facility and the terms and
8031 conditions of a tollway development agreement;

8032 (ii) submittal requirements;

8033 (iii) the criteria to be used to evaluate the proposals;

8034 (iv) the relative weight given to the criteria; and

8035 (v) the deadline by which competing proposals must be received; and

8036 (c) department to publish a notice advertising the request for competing proposals and
8037 providing information regarding how to obtain a copy of the request.

8038 (4) (a) The department may establish a fee in accordance with Section 63J-1-504 for
8039 reviewing unsolicited proposals and competing proposals submitted under this section.

8040 (b) The department may waive the fee under Subsection (4)(a) if it determines that it is
8041 reasonable and in the best interest of the state.

8042 Section 235. Section **72-7-504** is amended to read:

8043 **72-7-504. Advertising prohibited near interstate or primary system -- Exceptions**
8044 **-- Logo advertising -- Department rules.**

8045 (1) Outdoor advertising that is capable of being read or comprehended from any place
8046 on the main-traveled way of an interstate or primary system may not be erected or maintained,
8047 except:

8048 (a) directional and other official signs and notices authorized or required by law,
8049 including signs and notices pertaining to natural wonders and scenic and historic attractions,
8050 informational or directional signs regarding utility service, emergency telephone signs, buried
8051 or underground utility markers, and above ground utility closure signs;

8052 (b) signs advertising the sale or lease of property upon which they are located;

8053 (c) signs advertising activities conducted on the property where they are located,
8054 including signs on the premises of a public assembly facility as provided in Section 72-7-504.5;

8055 (d) signs located in a commercial or industrial zone;

8056 (e) signs located in unzoned industrial or commercial areas as determined from actual
8057 land uses; and

8058 (f) logo advertising under Subsection (2).

8059 (2) (a) The department may itself or by contract erect, administer, and maintain
8060 informational signs on the main-traveled way of an interstate or primary system for the display
8061 of logo advertising and information of interest to the traveling public if:

8062 (i) the department complies with Title 63G, Chapter [6] 6a, Utah Procurement Code, in

8063 the lease or other contract agreement with a private party for the sign or sign space; and
8064 (ii) the private party for the lease of the sign or sign space pays an amount set by the
8065 department to be paid to the department or the party under contract with the department under
8066 this Subsection (2).

8067 (b) The amount shall be sufficient to cover the costs of erecting, administering, and
8068 maintaining the signs or sign spaces.

8069 (c) The department may consult the Governor's Office of Economic Development in
8070 carrying out this Subsection (2).

8071 (3) (a) Revenue generated under Subsection (2) shall be:

8072 (i) applied first to cover department costs under Subsection (2); and

8073 (ii) deposited in the Transportation Fund.

8074 (b) Revenue in excess of costs under Subsection (2)(a) shall be deposited in the
8075 General Fund as a dedicated credit for use by the Governor's Office of Economic Development
8076 no later than the following fiscal year.

8077 (4) Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the
8078 rules made by the department under Sections 72-7-506 and 72-7-507.

8079 Section 236. Section **73-10-27** is amended to read:

8080 **73-10-27. Definitions -- Project priorities -- Considerations -- Determinations of**
8081 **feasibility -- Bids and contracts -- Definitions -- Retainage.**

8082 (1) As used in this section:

8083 (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.

8084 (b) "Estimated cost" means the cost of the labor, material, and equipment necessary for
8085 construction of the contemplated project.

8086 (c) "Lowest responsible bidder" means a licensed contractor:

8087 (i) who:

8088 (A) submits the lowest bid; and

8089 (B) furnishes a payment bond and a performance bond under Sections 14-1-18 and
8090 [~~63G-6-505~~] 63G-6a-1103; and

- 8091 (ii) whose bid:
- 8092 (A) is in compliance with the invitation for a bid; and
- 8093 (B) meets the plans and specifications.
- 8094 (2) In considering the priority for a project to be built or financed with funds made
- 8095 available under Section 73-10-24, the board shall give preference to a project that:
- 8096 (a) is sponsored by, or for the benefit of, the state or a political subdivision of the state;
- 8097 (b) meets a critical local need;
- 8098 (c) has greater economic feasibility;
- 8099 (d) will yield revenue to the state within a reasonable time or will return a reasonable
- 8100 rate of interest, based on financial feasibility; and
- 8101 (e) meets other considerations deemed necessary by the board, including wildlife
- 8102 management and recreational needs.
- 8103 (3) (a) In determining the economic feasibility, the board shall establish a
- 8104 benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.
- 8105 (b) In considering whether a project should be built, the benefit-to-cost ratio for each
- 8106 project shall be weighted based on the relative cost of the project.
- 8107 (c) A project, when considered in total with all other projects constructed under this
- 8108 chapter and still the subject of a repayment contract, may not cause the accumulative
- 8109 benefit-to-cost ratio of the projects to be less than one to one.
- 8110 (4) A project may not be built if the project is not:
- 8111 (a) in the public interest, as determined by the board; or
- 8112 (b) adequately designed based on sound engineering and geologic considerations.
- 8113 (5) In preparing a project constructed by the board, the board shall:
- 8114 (a) based on a competitive bid, award a contract for:
- 8115 (i) a flood control project:
- 8116 (A) involving a city or county; and
- 8117 (B) costing in excess of \$35,000;
- 8118 (ii) the construction of a storage reservoir in excess of 100 acre-feet; or

8119 (iii) the construction of a hydroelectric generating facility;
8120 (b) publish an advertisement for a competitive bid:
8121 (i) at least once a week for three consecutive weeks in a newspaper with general
8122 circulation in the state, with the last date of publication appearing at least five days before the
8123 schedule bid opening; and

8124 (ii) indicating that the board:

8125 (A) will award the contract to the lowest responsible bidder; and

8126 (B) reserves the right to reject any and all bids;

8127 (c) readvertise the project in the manner specified in Subsection (5)(b) if the board
8128 rejects all of the initial bids on the project; and

8129 (d) keep an accurate record of all facts and representations relied upon in preparing the
8130 board's estimated cost for a project that is subject to the competitive bidding requirements of
8131 this section.

8132 (6) If no satisfactory bid is received by the board upon the readvertisement of the
8133 project in accordance with Subsection (5), the board may proceed to construct the project in
8134 accordance with the plan and specifications used to calculate the estimated cost of the project.

8135 (7) If a payment on a contract with a private contractor for construction of a project
8136 under this section is retained or withheld, it shall be retained or withheld and released as
8137 provided in Section 13-8-5.

8138 Section 237. Section **73-23-3** is amended to read:

8139 **73-23-3. Duties and powers of Division of Water Resources.**

8140 For purposes of this chapter, the Division of Water Resources:

8141 (1) shall provide for the construction, operation, and maintenance of the West Desert
8142 Pumping Project;

8143 (2) may enter into agreements as necessary to provide for all or any portion of the West
8144 Desert Pumping Project, including any indemnification agreements required by the federal
8145 government;

8146 (3) may acquire land or any other property right by any lawful means, including

8147 eminent domain;

8148 (4) is exempt from Title 63G, Chapter ~~[6, the]~~ 6a, Utah Procurement Code; and

8149 (5) may proceed without obtaining water right approval from the state engineer.

8150 Section 238. Section **76-10-1602** is amended to read:

8151 **76-10-1602. Definitions.**

8152 As used in this part:

8153 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
8154 business trust, association, or other legal entity, and any union or group of individuals
8155 associated in fact although not a legal entity, and includes illicit as well as licit entities.

8156 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
8157 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
8158 have the same or similar purposes, results, participants, victims, or methods of commission, or
8159 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
8160 demonstrate continuing unlawful conduct and be related either to each other or to the
8161 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
8162 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
8163 activity as defined by this part shall have occurred within five years of the commission of the
8164 next preceding act alleged as part of the pattern.

8165 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
8166 interest in property, including state, county, and local governmental entities.

8167 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
8168 command, encourage, or intentionally aid another person to engage in conduct which would
8169 constitute any offense described by the following crimes or categories of crimes, or to attempt
8170 or conspire to engage in an act which would constitute any of those offenses, regardless of
8171 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
8172 or a felony:

8173 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
8174 Recording Practices Act;

- 8175 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
8176 Code, Sections 19-1-101 through 19-7-109;
- 8177 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
8178 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
8179 Code of Utah, or Section 23-20-4;
- 8180 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
8181 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;
- 8182 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
8183 Offenses and Procedure Act;
- 8184 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
8185 Land Sales Practices Act;
- 8186 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
8187 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
8188 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
8189 Clandestine Drug Lab Act;
- 8190 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
8191 Securities Act;
- 8192 (i) any act prohibited by the criminal provisions of Title 63G, Chapter [6] 6a, Utah
8193 Procurement Code;
- 8194 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 8195 (k) a threat of terrorism, Section 76-5-107.3;
- 8196 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 8197 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 8198 (n) sexual exploitation of a minor, Section 76-5b-201;
- 8199 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 8200 (p) causing a catastrophe, Section 76-6-105;
- 8201 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 8202 (r) burglary of a vehicle, Section 76-6-204;

- 8203 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 8204 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 8205 (u) theft, Section 76-6-404;
- 8206 (v) theft by deception, Section 76-6-405;
- 8207 (w) theft by extortion, Section 76-6-406;
- 8208 (x) receiving stolen property, Section 76-6-408;
- 8209 (y) theft of services, Section 76-6-409;
- 8210 (z) forgery, Section 76-6-501;
- 8211 (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 8212 76-6-506.6;
- 8213 (bb) deceptive business practices, Section 76-6-507;
- 8214 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 8215 criticism of goods, Section 76-6-508;
- 8216 (dd) bribery of a labor official, Section 76-6-509;
- 8217 (ee) defrauding creditors, Section 76-6-511;
- 8218 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 8219 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 8220 (hh) bribery or threat to influence contest, Section 76-6-514;
- 8221 (ii) making a false credit report, Section 76-6-517;
- 8222 (jj) criminal simulation, Section 76-6-518;
- 8223 (kk) criminal usury, Section 76-6-520;
- 8224 (ll) fraudulent insurance act, Section 76-6-521;
- 8225 (mm) retail theft, Section 76-6-602;
- 8226 (nn) computer crimes, Section 76-6-703;
- 8227 (oo) identity fraud, Section 76-6-1102;
- 8228 (pp) mortgage fraud, Section 76-6-1203;
- 8229 (qq) sale of a child, Section 76-7-203;
- 8230 (rr) bribery to influence official or political actions, Section 76-8-103;

8231 (ss) threats to influence official or political action, Section 76-8-104;
8232 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
8233 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
8234 76-8-106;
8235 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
8236 (ww) obstruction of justice, Section 76-8-306;
8237 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
8238 (yy) false or inconsistent material statements, Section 76-8-502;
8239 (zz) false or inconsistent statements, Section 76-8-503;
8240 (aaa) written false statements, Section 76-8-504;
8241 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
8242 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
8243 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
8244 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
8245 76-8-1205;
8246 (fff) unemployment insurance fraud, Section 76-8-1301;
8247 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
8248 76-9-301(2)(d) or (e), or Section 76-9-301.1;
8249 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
8250 parts, Section 76-10-306;
8251 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
8252 device, Section 76-10-307;
8253 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
8254 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
8255 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
8256 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
8257 76-10-1002;
8258 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,

8259 Section 76-10-1003;
8260 (ooo) sales in containers bearing registered trademark of substituted articles, Section
8261 76-10-1004;
8262 (ppp) selling or dealing with article bearing registered trademark or service mark with
8263 intent to defraud, Section 76-10-1006;
8264 (qqq) gambling, Section 76-10-1102;
8265 (rrr) gambling fraud, Section 76-10-1103;
8266 (sss) gambling promotion, Section 76-10-1104;
8267 (ttt) possessing a gambling device or record, Section 76-10-1105;
8268 (uuu) confidence game, Section 76-10-1109;
8269 (vvv) distributing pornographic material, Section 76-10-1204;
8270 (www) inducing acceptance of pornographic material, Section 76-10-1205;
8271 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
8272 (yyy) distribution of pornographic films, Section 76-10-1222;
8273 (zzz) indecent public displays, Section 76-10-1228;
8274 (aaaa) prostitution, Section 76-10-1302;
8275 (bbbb) aiding prostitution, Section 76-10-1304;
8276 (cccc) exploiting prostitution, Section 76-10-1305;
8277 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
8278 (eeee) communications fraud, Section 76-10-1801;
8279 (ffff) any act prohibited by the criminal provisions of [~~Chapter 10;~~ Part 19, Money
8280 Laundering and Currency Transaction Reporting Act;
8281 (gggg) vehicle compartment for contraband, Section 76-10-2801;
8282 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
8283 this state; and
8284 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
8285 Sec. 1961 (1)(B), (C), and (D).
8286 Section 239. Section **78A-2-112** is amended to read:

8287 **78A-2-112. Grants to nonprofit legal assistance organization.**

8288 Subject to legislative appropriation, the state court administrator shall, in accordance
8289 with Title 63G, Chapter [6] 6a, Utah Procurement Code, solicit requests for proposals and
8290 award grants to nonprofit legal assistance providers to provide legal assistance throughout the
8291 state to:

8292 (1) low to moderate income victims of domestic violence; and

8293 (2) low to moderate income individuals in family law matters.

8294 Section 240. Section **79-2-404** is amended to read:

8295 **79-2-404. Contracting powers of department -- Health insurance coverage.**

8296 (1) For purposes of this section:

8297 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
8298 34A-2-104 who:

8299 (i) works at least 30 hours per calendar week; and

8300 (ii) meets employer eligibility waiting requirements for health care insurance which
8301 may not exceed the first day of the calendar month following 90 days from the date of hire.

8302 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

8303 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

8304 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

8305 (2) (a) Except as provided in Subsection (3), this section applies a design or
8306 construction contract entered into by, or delegated to, the department or a division, board, or
8307 council of the department on or after July 1, 2009, and to a prime contractor or to a
8308 subcontractor in accordance with Subsection (2)(b).

8309 (b) (i) A prime contractor is subject to this section if the prime contract is in the
8310 amount of \$1,500,000 or greater.

8311 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
8312 \$750,000 or greater.

8313 (3) This section does not apply to contracts entered into by the department or a
8314 division, board, or council of the department if:

- 8315 (a) the application of this section jeopardizes the receipt of federal funds;
8316 (b) the contract or agreement is between:
8317 (i) the department or a division, board, or council of the department; and
8318 (ii) (A) another agency of the state;
8319 (B) the federal government;
8320 (C) another state;
8321 (D) an interstate agency;
8322 (E) a political subdivision of this state; or
8323 (F) a political subdivision of another state; or
8324 (c) the contract or agreement is:
8325 (i) for the purpose of disbursing grants or loans authorized by statute;
8326 (ii) a sole source contract; or
8327 (iii) an emergency procurement.
8328 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
8329 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
8330 threshold required by Subsection (2).
8331 (b) A person who intentionally uses change orders or contract modifications to
8332 circumvent the requirements of Subsection (2) is guilty of an infraction.
8333 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
8334 that the contractor has and will maintain an offer of qualified health insurance coverage for the
8335 contractor's employees and the employees' dependents during the duration of the contract.
8336 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
8337 shall demonstrate to the department that the subcontractor has and will maintain an offer of
8338 qualified health insurance coverage for the subcontractor's employees and the employees'
8339 dependents during the duration of the contract.
8340 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
8341 the duration of the contract is subject to penalties in accordance with administrative rules
8342 adopted by the department under Subsection (6).

8343 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
8344 requirements of Subsection (5)(b).

8345 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
8346 the duration of the contract is subject to penalties in accordance with administrative rules
8347 adopted by the department under Subsection (6).

8348 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
8349 requirements of Subsection (5)(a).

8350 (6) The department shall adopt administrative rules:

8351 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

8352 (b) in coordination with:

8353 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

8354 (ii) a public transit district in accordance with Section 17B-2a-818.5;

8355 (iii) the State Building Board in accordance with Section 63A-5-205;

8356 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

8357 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

8358 (vi) the Legislature's Administrative Rules Review Committee; and

8359 (c) which establish:

8360 (i) the requirements and procedures a contractor must follow to demonstrate

8361 compliance with this section to the department which shall include:

8362 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

8363 (b) more than twice in any 12-month period; and

8364 (B) that the actuarially equivalent determination required for qualified health insurance
8365 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
8366 division with a written statement of actuarial equivalency from either:

8367 (I) the Utah Insurance Department;

8368 (II) an actuary selected by the contractor or the contractor's insurer; or

8369 (III) an underwriter who is responsible for developing the employer group's premium
8370 rates;

8371 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
8372 violates the provisions of this section, which may include:

8373 (A) a three-month suspension of the contractor or subcontractor from entering into
8374 future contracts with the state upon the first violation;

8375 (B) a six-month suspension of the contractor or subcontractor from entering into future
8376 contracts with the state upon the second violation;

8377 (C) an action for debarment of the contractor or subcontractor in accordance with
8378 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

8379 (D) monetary penalties which may not exceed 50% of the amount necessary to
8380 purchase qualified health insurance coverage for an employee and a dependent of an employee
8381 of the contractor or subcontractor who was not offered qualified health insurance coverage
8382 during the duration of the contract; and

8383 (iii) a website on which the department shall post the benchmark for the qualified
8384 health insurance coverage identified in Subsection (1)(c).

8385 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
8386 subcontractor who intentionally violates the provisions of this section shall be liable to the
8387 employee for health care costs that would have been covered by qualified health insurance
8388 coverage.

8389 (ii) An employer has an affirmative defense to a cause of action under Subsection
8390 (7)(a)(i) if:

8391 (A) the employer relied in good faith on a written statement of actuarial equivalency
8392 provided by:

8393 (I) an actuary; or

8394 (II) an underwriter who is responsible for developing the employer group's premium
8395 rates; or

8396 (B) the department determines that compliance with this section is not required under
8397 the provisions of Subsection (3) or (4).

8398 (b) An employee has a private right of action only against the employee's employer to

8399 enforce the provisions of this Subsection (7).

8400 (8) Any penalties imposed and collected under this section shall be deposited into the
8401 Medicaid Restricted Account created in Section 26-18-402.

8402 (9) The failure of a contractor or subcontractor to provide qualified health insurance
8403 coverage as required by this section:

8404 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
8405 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
8406 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

8407 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
8408 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
8409 or construction.

8410 Section 241. Section **79-4-203** is amended to read:

8411 **79-4-203. Powers and duties of division.**

8412 (1) As used in this section, "real property" includes land under water, upland, and all
8413 other property commonly or legally defined as real property.

8414 (2) The Division of Wildlife Resources shall retain the power and jurisdiction
8415 conferred upon it by law within state parks and on property controlled by the Division of Parks
8416 and Recreation with reference to fish and game.

8417 (3) The division shall permit multiple use of state parks and property controlled by it
8418 for purposes such as grazing, fishing, hunting, mining, and the development and utilization of
8419 water and other natural resources.

8420 (4) (a) The division may acquire real and personal property in the name of the state by
8421 all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange,
8422 or otherwise, subject to the approval of the executive director and the governor.

8423 (b) In acquiring any real or personal property, the credit of the state may not be pledged
8424 without the consent of the Legislature.

8425 (5) (a) Before acquiring any real property, the division shall notify the county
8426 legislative body of the county where the property is situated of its intention to acquire the

8427 property.

8428 (b) If the county legislative body requests a hearing within 10 days of receipt of the
8429 notice, the division shall hold a public hearing in the county concerning the matter.

8430 (6) Acceptance of gifts or devises of land or other property is at the discretion of the
8431 division, subject to the approval of the executive director and the governor.

8432 (7) The division shall acquire property by eminent domain in the manner authorized by
8433 Title 78B, Chapter 6, Part 5, Eminent Domain.

8434 (8) (a) The division may make charges for special services and use of facilities, the
8435 income from which is available for park and recreation purposes.

8436 (b) The division may conduct and operate those services necessary for the comfort and
8437 convenience of the public.

8438 (9) (a) The division may lease or rent concessions of all lawful kinds and nature in state
8439 parks and property to persons, partnerships, and corporations for a valuable consideration upon
8440 the recommendation of the board.

8441 (b) The division shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code,
8442 in selecting concessionaires.

8443 (10) The division shall proceed without delay to negotiate with the federal government
8444 concerning the Weber Basin and other recreation and reclamation projects.

8445 (11) The division shall receive and distribute voluntary contributions collected under
8446 Section 41-1a-422 in accordance with Section 79-4-404.

8447 Section 242. **Repealer.**

8448 This bill repeals:

8449 Section **10-7-87, Procurement -- Use of recycled goods.**

8450 Section **11-37-101, Definition -- Procurement -- Use of recycled goods.**

8451 Section **17-15-24, Procurement -- Use of recycled goods.**

8452 Section **17B-1-109, Procurement -- Use of recycled goods.**

8453 Section **26A-1-108.7, Procurement -- Use of recycled goods.**

8454 Section **63G-6-206, Transfer of power to policy board.**

8455 Section **63G-6-301, Rules for specifications.**

8456 Section **63G-6-401, Contracts awarded by sealed bidding -- Procedure.**

8457 Section **63G-6-402, Contracts awarded by reverse auction.**

8458 Section **63G-6-403, Procurement -- Use of recycled goods.**

8459 Section **63G-6-406, Preference for recycled paper and paper products.**

8460 Section **63G-6-407, Use of alkaline paper.**

8461 Section **63G-6-408, Use of competitive sealed proposals in lieu of bids -- Procedure.**

8462 Section **63G-6-409, Small purchases.**

8463 Section **63G-6-411, Emergency procurements.**

8464 Section **63G-6-414, Prequalification of suppliers.**

8465 Section **63G-6-417, Period of time for contract of supplies.**

8466 Section **63G-6-418, Right of state to inspect place of business of contractor or**

8467 **subcontractor.**

8468 Section **63G-6-422, Exemptions from source selection and contract requirements --**

8469 **Violation penalty.**

8470 Section **63G-6-426, Tie bids -- Preference for providers of state products --**

8471 **Resolution of tie bids -- Record of tie bids.**

8472 Section **63G-6-903, Payments between public procurement units.**

8473 Section **63G-6-906, Resolving controversy arising under a cooperative purchasing**

8474 **agreement.**

8475 Section **63G-6-1001, Felony to accept emolument.**

8476 Section **63G-6-1002, Felony to offer emolument.**

8477 Section 243. **Effective date.**

8478 This bill takes effect on May 1, 2013.

8479 Section 244. **Coordinating S.B. 153 with S.B. 114 -- Substantive and technical**

8480 **amendments.**

8481 If this S.B. 153 and S.B. 114, Contesting Public Procurements, both pass and become

8482 law, the Legislature intends that the Office of Legislative Research and General Counsel shall

8483 prepare the Utah Code database for publication on May 1, 2013, as follows:

8484 (1) by amending Subsection 26-8a-405.3(5)(b) to read:

8485 "(b) [The Procurement Appeals Board created in Section 63G-6-807] A procurement
8486 appeals panel described in Section 63G-6a-1702 shall have jurisdiction to review and
8487 determine an appeal of an offeror under this section[in the same manner as provided in Section
8488 63G-6-810].";

8489 (2) by amending Subsection 26-8a-405.3(5)(c)(ii) to read:

8490 "(ii) [The factual determination required by Subsection 63G-6-813(1) shall be based on]
8491 A procurement appeals panel described in Section 63G-6a-1702 shall determine whether the
8492 solicitation or award was made in accordance with the procedures set forth in this section and
8493 Section 26-8a-405.2.";

8494 (3) by amending Subsection 63A-5-208(6)(d)(ii) to read:

8495 "(ii) may not pursue claims or disputes under the dispute resolution process established
8496 in [Sections 63G-6-805 through 63G-6-814] Title 63G, Chapter 6a, Utah Procurement Code.";

8497 (4) by adding the following definition to Section 63G-6a-103 and renumbering the
8498 remaining subsections in Section 63G-6a-103 accordingly:

8499 "(33) "Protest officer" means:

8500 (a) as it relates to a state purchasing unit, the head of the state purchasing unit or a
8501 designee of the head of the state purchasing unit;

8502 (b) as it relates to a local public procurement unit, the purchasing officer or the
8503 governing body of the local public procurement unit, or a designee of either; or

8504 (c) as it relates to a public procurement unit other than a public procurement unit
8505 described in Subsection (1)(a) or (b), the chief procurement officer or the chief procurement
8506 officer's designee.";

8507 (5) the changes to Section 63G-6a-105 (renumbered from Section 63G-6-104) in S.B.
8508 153 supersede the changes to Section 63G-6-104 in S.B. 114;

8509 (6) by amending Section 63G-6a-202 (renumbered from Section 63G-6-201) to read:

8510 "[63G-6-201] 63G-6a-202. Creation of Utah State Procurement Policy Board.

8511 (1) ~~[(a)]~~ There is created ~~[a state procurement policy board]~~ the Utah State Procurement
8512 Policy Board.

8513 ~~[(b)]~~ (2) The ~~[policy board shall consist of 10]~~ board consists of up to 15 members as
8514 follows:

8515 ~~[(i) an employee of a state institution]~~

8516 (a) two representatives of state institutions of higher education, appointed by the board
8517 of regents;

8518 ~~[(ii) an employee]~~

8519 (b) a representative of the Department of Human Services, appointed by the executive
8520 director of that department;

8521 ~~[(iii) an employee]~~

8522 (c) a representative of the Department of Transportation, appointed by the executive
8523 director of that department;

8524 ~~[(iv) an employee of a school district]~~

8525 (d) two representatives of school districts, appointed by ~~[a cooperative purchasing entity~~
8526 ~~for school districts]~~ the State Office of Education;

8527 ~~[(v) an employee]~~

8528 (e) a representative of the Division of Facilities Construction and Management,
8529 appointed by the director of that division;

8530 ~~[(vi) an employee of a county]~~

8531 (f) one representative of a county, appointed by the Utah Association of Counties;

8532 ~~[(vii) an employee of a city]~~

8533 (g) one representative of a city or town, appointed by the Utah League of Cities and
8534 Towns;

8535 ~~[(viii) an employee of a local district]~~

8536 (h) two representatives of local districts or special service ~~[district]~~ districts, appointed
8537 by the Utah Association of Special Districts;

8538 ~~[(ix)]~~ (i) the executive director of the Department of Technology Services or the

8539 executive director's designee; ~~and~~

8540 ~~[(*)]~~ (j) the chief procurement officer or the chief procurement officer's designee[:]; and

8541 (k) two representatives of state agencies, other than a state agency already represented

8542 on the board, appointed by the executive director of the Department of Administrative

8543 Services, with the approval of the executive director of the state agency that employs the

8544 employee.

8545 ~~[(c)]~~ (3) Members of the ~~[policy]~~ board shall be knowledgeable and experienced in, and

8546 have supervisory responsibility for, procurement in their official positions.

8547 ~~[(2)]~~ (4) A board member ~~[staff]~~ may serve as long as the member meets the

8548 description in Subsection ~~[(1)(b)]~~ (2) unless removed by the person or entity ~~[who appointed]~~

8549 with the authority to appoint the board member.

8550 ~~[(3)]~~ (5) (a) The ~~[policy]~~ board shall:

8551 (i) adopt rules of procedure for conducting its business; and

8552 (ii) elect a chair to serve for one year.

8553 (b) The chair of the board shall be selected by a majority of the members of the board

8554 and may be elected to succeeding terms.

8555 (c) The chief procurement officer shall designate an employee of the ~~[Division of~~

8556 ~~Purchasing and General Services]~~ division to serve as the nonvoting secretary to the policy

8557 board.

8558 ~~[(4)]~~ (6) A member of the board may not receive compensation or benefits for the

8559 member's service, but may receive per diem and travel expenses in accordance with:

8560 (a) Section 63A-3-106;

8561 (b) Section 63A-3-107; and

8562 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

8563 63A-3-107.";

8564 (7) by amending Section 63G-6a-203 (renumbered from Section 63G-6-202) to read:

8565 "[63G-6-202:] 63G-6a-203. Powers and duties of board.

8566 [1) Except as otherwise provided in Section 63G-6-104 and Subsection

8567 63G-6-208(1)(b), the policy board shall:]

8568 ~~[(a) make rules, consistent with this chapter, governing the procurement, management,~~
8569 ~~and control of any and all supplies, services, technology, and construction to be procured by the~~
8570 ~~state; and]~~

8571 ~~[(b)]~~ (1) In addition to making rules in accordance with Section 63G-6a-402 and the
8572 other provisions of this chapter, the board shall consider and decide matters of policy within
8573 the provisions of this chapter, including those referred to it by the chief procurement officer.

8574 (2) (a) The ~~[policy]~~ board may:

8575 (i) audit and monitor the implementation of its rules and the requirements of this
8576 chapter;

8577 (ii) upon the request of a local public procurement unit, review that local public
8578 procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of
8579 this chapter or rules made by the board; and

8580 (iii) approve the use of innovative procurement ~~[methods proposed by local public~~
8581 ~~procurement units]~~ processes.

8582 (b) ~~[The policy]~~ Except as provided in Section 63G-6a-1702, the board may not
8583 exercise authority over the award or administration of:

8584 (i) any particular ~~[contract]~~ contract; or

8585 (ii) ~~[over]~~ any dispute, claim, or litigation pertaining to any particular contract.

8586 (3) The board does not have authority over a matter involving:

8587 (a) a non-executive state procurement unit;

8588 (b) a local government unit; or

8589 (c) except as expressly provided in this chapter, a local public procurement unit.";

8590 (8) the changes to Section 63G-6a-1602 (renumbered from Section 63G-6-805) in S.B.
8591 153 do not go into effect;

8592 (9) by renumbering and amending Section 63G-6-801 to Section 63G-6a-1602, to read:

8593 "[63G-6-801.] 63G-6a-1602. Protest to chief procurement officer or head of a
8594 purchasing agency -- Time -- Authority to resolve protest.

(1) ~~[Any]~~ Except as provided in Subsection (2), a person who is an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with [the solicitation] a procurement or award of a contract may protest to the [chief procurement officer or the head of a purchasing agency. A] protest officer as follows:

(a) with respect to an invitation for bids or a request for proposals[~~-shall be submitted in writing prior to~~]:

(i) before the opening of bids or the closing date for proposals[~~, unless~~]; or

(ii) if the [aggrieved] person did not know and should not have known of the facts giving rise to the protest [prior to] before the bid opening or the closing date for proposals[~~The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.~~], within seven days after the day on which the person knows or should have known of the facts giving rise to the protest; or

~~[(2) Subject to the applicable requirements in Section 63G-10-403, the chief procurement officer, the head of a purchasing agency, or a designee of either officer shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.]~~

(b) if Subsection (1)(a) does not apply, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest.

(2) A person who is debarred or suspended under this chapter may protest the debarment or suspension to the protest officer that ordered the debarment, as applicable, within seven days after the day on which the debarment or suspension is ordered.

(3) A person who files a protest under this section shall include in the filing document:

(a) the person's address of record and email address of record; and

(b) a concise statement of the grounds upon which the protest is made.

(4) A person described in Subsection (1), (2), or (3) who fails to timely file a protest under this section may not bring a protest, action, or appeal challenging a solicitation or award of a contract, or a debarment or suspension, before the protest officer, an appeals panel, a court, or any other forum.

8623 (5) Subject to the applicable requirements of Section 63G-10-403, a protest officer, or
8624 the protest officer's designee, may enter into a settlement agreement to resolve a protest.";

8625 (10) the changes to Section 63G-6a-1603 (renumbered from Section 63G-6-801) in S.B.
8626 153 do not go into effect;

8627 (11) by renumbering and amending Section 63G-6-806 to Section 63G-6a-1603, to
8628 read:

8629 **"~~[63G-6-806.] 63G-6a-1603. Decisions of protest officer to be in writing -- Effect of~~**
8630 **~~no writing.~~**

8631 ~~[(1)The chief procurement officer, the head of a purchasing agency, or the designee of~~
8632 ~~either officer]~~

8633 (1) After a timely protest is filed in accordance with Section 63G-6a-1602, the protest
8634 officer:

8635 (a) shall consider the protest; and

8636 (b) may hold a hearing on the protest.

8637 (2) (a) The protest officer may:

8638 (i) subpoena witnesses and compel their attendance at a protest hearing; or

8639 (ii) subpoena documents for production at a protest hearing.

8640 (b) The Rules of Evidence do not apply to a protest hearing.

8641 (c) The Procurement Policy Board shall make rules relating to intervention in a protest,
8642 including designating:

8643 (i) who may intervene; and

8644 (ii) the time and manner of intervention.

8645 (d) If a hearing on a protest is held under this section, the protest officer shall:

8646 (i) record the hearing;

8647 (ii) preserve all evidence presented at the hearing; and

8648 (iii) preserve all records and other evidence relied upon in reaching the written decision
8649 described in this section.

8650 (e) Regardless of whether a hearing on a protest is held under this section, the protest

8651 officer shall preserve all records and other evidence relied upon in reaching the written
8652 decision.

8653 (f) The records described in Subsections (2)(d) and (e) may not be destroyed until the
8654 decision, and any appeal of the decision, becomes final.

8655 (g) A protest officer who holds a hearing, considers a protest, or issues a written
8656 decision under this section does not waive the right to, at a later date, question or challenge the
8657 protest officer's jurisdiction to hold the hearing, consider the protest, or render the decision.

8658 (3) A protest officer, or the protest officer's designee, shall promptly issue a written
8659 decision regarding any protest, debarment [or], suspension, or contract controversy if it is not
8660 settled by [a] mutual agreement. The decision shall state the reasons for the action taken and
8661 inform the protestor, contractor, or prospective contractor of the right to judicial or
8662 administrative review as provided in this chapter.

8663 [(2)] (4) A decision [shall be] described in this section is effective until stayed or
8664 reversed on appeal, except to the extent provided in Section [63G-6-802] 63G-6a-1903. A
8665 [copy of the] person who issues a decision [under] described in Subsection (1) shall [be mailed
8666 or otherwise furnished immediately] mail, email, or otherwise immediately furnish a copy of
8667 the decision to the protestor, prospective contractor, or contractor. The decision shall be final
8668 and conclusive unless the protestor, prospective contractor, or contractor [appeals
8669 administratively to the procurement appeals board in accordance with Subsection
8670 63G-6-810(2) or the protestor, prospective contractor, or contractor]:

8671 (a) for a controversy described in Section 63G-6a-1905, commences an action in district
8672 court in accordance with [Section 63G-6-815.] Subsection 63G-6a-1802(5);

8673 (b) for a controversy related to a solicitation or the award of a contract, files an appeal
8674 under Section 63G-6a-1702; or

8675 (c) for a debarment or suspension, files an appeal under Section 63G-6a-1702.

8676 [(3)] (5) If the [chief procurement officer, the head of a purchasing agency, or the
8677 designee of either] protest officer does not issue the written decision regarding a protest or a
8678 contract controversy within [60] 30 calendar days after the day on which a written request for a

8679 final decision is filed with the protest officer, or within [~~such~~] a longer period as may be agreed
8680 upon by the parties, [~~then~~] the protester, prospective contractor, or contractor may proceed as if
8681 an adverse decision had been received.

8682 (6) Except for a controversy described in Section 63G-6a-1905, a determination under
8683 this section by the protest officer regarding an issue of fact may not be overturned on appeal
8684 unless the decision is arbitrary and capricious or clearly erroneous.";

8685 (12) the changes to Section 63G-6a-1604 (renumbered from Section 63G-6-806) in S.B.
8686 153 do not go into effect;

8687 (13) by enacting Section 63G-6a-1604 to read:

8688 **"63G-6a-1604. Dismissal of protest not filed in accordance with requirements.**

8689 The protest officer may dismiss a protest described in Section 63G-6a-1602 that is not
8690 filed in accordance with the requirements of this part.";

8691 (14) the changes to Section 63G-6a-1607 (renumbered from Section 63G-6-803) in S.B.
8692 153 do not go into effect;

8693 (15) the changes to Section 63G-6a-1702 (renumbered from Section 63G-6-807) in S.B.
8694 153 do not go into effect;

8695 (16) by renumbering and amending Section 63G-6-807 to Section 63G-6a-1702, to
8696 read:

8697 **"[~~63G-6-807~~] 63G-6a-1702. Appeal to procurement policy board -- Appointment of**
8698 **procurement appeals panel -- Proceedings.**

8699 (1) A party to a protest may appeal the protest decision to the procurement policy board
8700 by:

8701 (a) filing a written notice of appeal with the chair of the procurement policy board
8702 within seven days after:

8703 (i) the day on which the written decision described in Section 63G-6a-1603 is:

8704 (A) personally served on the party or the party's representative; or

8705 (B) emailed or mailed to the address or email address of record provided by the party
8706 under Subsection 63G-6a-1602(3); or

8707 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(5) ends, if
8708 a written decision is not issued before the end of the 30-day period;

8709 (b) including in the filing document the person's address of record and email address of
8710 record; and

8711 (c) at the time that the notice of appeal described in Subsection (1)(a) is filed,
8712 complying with the requirements of Section 63G-6a-1703 regarding the posting of a security
8713 deposit or a bond.

8714 (2) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

8715 (a) a decision on the protest has been issued; or

8716 (b) a decision is not issued and the 30-day period described in Subsection
8717 63G-6a-1603(5) has passed.

8718 (3) The chair of the procurement policy board or a designee of the chair who is not
8719 employed by the public procurement unit responsible for the solicitation, contract award, or
8720 other action complained of:

8721 (a) shall, within seven days after the day on which the chair receives a timely written
8722 notice of appeal under Subsection (1), appoint:

8723 (i) a procurement appeals panel to hear and decide the appeal, consisting of at least
8724 three individuals, each of whom shall be:

8725 (A) a member of the Procurement Policy Board; or

8726 (B) a designee of a member appointed under Subsection (3)(a)(i)(A), if the designee is
8727 approved by the chair; and

8728 (ii) one of the members of the procurement appeals panel to be the chair of the panel;

8729 (b) may:

8730 (i) appoint the same procurement appeals panel to hear more than one appeal; or

8731 (ii) appoint a separate procurement appeals panel for each appeal; and

8732 (c) may not appoint a person to a procurement appeals panel if the person is employed
8733 by the public procurement unit responsible for the solicitation, contract award, or other action
8734 complained of.

- 8735 (4) A procurement appeals panel described in Subsection (3) shall:
8736 (a) consist of an odd number of members;
8737 (b) except as provided in Subsection (5), conduct an informal proceeding on the appeal
8738 within 60 days after the day on which the procurement appeals panel is appointed, unless all
8739 parties stipulate to a later date;
8740 (c) at least seven days before the proceeding, mail, email, or hand-deliver a written
8741 notice of the proceeding to the parties to the appeal; and
8742 (d) within seven days after the day on which the proceeding ends:
8743 (i) issue a written decision on the appeal; and
8744 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
8745 appeal and to the protest officer.
8746 (5) A procurement appeals panel may continue a procurement appeals proceeding
8747 beyond the 60-day period described in Subsection (4)(b) if the procurement appeals panel
8748 determines that the continuance is in the interests of justice.
8749 (6) A procurement appeals panel:
8750 (a) shall consider the appeal based solely on:
8751 (i) the protest decision;
8752 (ii) the record considered by the person who issued the protest decision; and
8753 (iii) if a protest hearing was held, the record of the protest hearing;
8754 (b) may not take additional evidence; and
8755 (c) shall uphold the decision of the protest officer, unless the decision is arbitrary and
8756 capricious or clearly erroneous.
8757 (7) If a procurement appeals panel determines that the decision of the protest officer is
8758 arbitrary and a capricious or clearly erroneous, the procurement appeals panel:
8759 (a) shall remand the matter to the protest officer, to cure the problem or render a new
8760 decision;
8761 (b) may recommend action that the protest officer should take; and
8762 (c) may not order that:

8763 (i) a contract be awarded to a certain person;
8764 (ii) a contract or solicitation be cancelled; or
8765 (iii) any other action be taken other than the action described in Subsection (7)(a).
8766 (8) The Procurement Policy Board shall make rules relating to the conduct of an appeals
8767 proceeding, including rules that provide for:
8768 (a) expedited proceedings; and
8769 (b) electronic participation in the proceedings by panel members and participants.
8770 (9) The Rules of Evidence do not apply to an appeals proceeding. ";
8771 (17) the changes to Section 63G-6a-1703 (renumbered from Section 63G-6-810) in S.B.
8772 153 do not go into effect and Section 63G-6-810 in S.B. 114 remains repealed;
8773 (18) by renumbering and amending Section 63G-6-807.5, which was enacted by S.B.
8774 114, to Section 63G-6a-1703 to read:
8775 **"~~63G-6-807.5.~~ 63G-6a-1703. Requirement to post a security deposit or bond --**
8776 **Exceptions -- Forfeiture of security deposit or bond.**
8777 (1) Except as provided by rule made under Subsection (2)(a), a person who files an
8778 appeal under Section 63G-6a-1702 shall, at the time that the appeal is filed, pay a security
8779 deposit or post a bond with the protest officer in an amount that is the greater of:
8780 (a) for the appeal of a debarment or suspension, \$1,000;
8781 (b) for any type of procurement, \$1,000;
8782 (c) for an invitation for bids, 5% of:
8783 (i) the lowest bid amount, if the bid opening has occurred; or
8784 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the
8785 bid opening has not yet occurred;
8786 (d) for a request for proposals, 5% of:
8787 (i) the lowest cost proposed in a response to a request for proposals, if the opening of
8788 proposals has occurred; or
8789 (ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the
8790 opening of proposals has not occurred; or

8791 (e) for a type of procurement other than an invitation for bids or a request for proposals,
8792 the amount established in accordance with Subsection (2).

8793 (2) The Procurement Policy Board shall make rules, in accordance with Title 63G,
8794 Chapter 3, Utah Administrative Rulemaking Act, that establish:

8795 (a) circumstances and procedures under which the requirement for paying a security
8796 deposit or posting a bond may be waived or reduced on grounds, including:

8797 (i) that the person filing the appeal is impecunious;

8798 (ii) circumstances where certain small purchases are involved; or

8799 (iii) other grounds determined by the Division of Purchasing and General Services to be
8800 appropriate; and

8801 (b) the method used to determine:

8802 (i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and

8803 (ii) the amount described in Subsection (1)(e).

8804 (3) The chair of the Procurement Policy Board shall a dismiss a protest filed under
8805 Section 63G-6a-1702 if the actual or prospective bidder, offeror, or contractor fails to timely
8806 pay the security deposit or post the bond required under Subsection (1).

8807 (4) The chair of the Procurement Policy Board shall:

8808 (a) retain the security deposit or bond until the protest and any appeal of the protest
8809 decision is final;

8810 (b) as it relates to a security deposit:

8811 (i) deposit the security deposit into an interest-bearing account; and

8812 (ii) after any appeal of the protest decision becomes final, return the security deposit
8813 and the interest it accrues to the person who paid the security deposit, unless the security
8814 deposit is forfeited to the General Fund under Subsection (5); and

8815 (c) as it relates to a bond:

8816 (i) retain the bond until the protest and any appeal of the protest decision becomes final;
8817 and

8818 (ii) after the protest and any appeal of the protest decision becomes final, return the

8819 bond to the person who posted the bond, unless the bond is forfeited to the General Fund under
8820 Subsection (5).

8821 (5) A security deposit that is paid, or a bond that is posted, under this section shall
8822 forfeit to the General Fund if:

8823 (a) the person who paid the security deposit or posted the bond fails to ultimately
8824 prevail on appeal; and

8825 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
8826 primary purpose is to harass or cause a delay.";

8827 (19) the changes to Section 63G-6a-1704 (renumbered from Section 63G-6-808) in S.B.
8828 153 do not go into effect and Section 63G-6-808 in S.B. 114 remains repealed;

8829 (20) by renumbering and amending Section 63G-6-812 to Section 63G-6a-1704, to
8830 read:

8831 **"~~[63G-6-812.] 63G-6a-1704. Discontinued appeal with prejudice, except as~~**
8832 **~~authorized.~~**

8833 After notice of an appeal [~~has been filed with the Procurement Appeals Board~~] ~~to the~~
8834 procurement policy board is filed under Section 63G-6a-1702, no party may discontinue the
8835 appeal without prejudice, except as authorized by the [~~Procurement Appeals Board~~]
8836 procurement appeals panel appointed for the appeal.";

8837 (21) the changes to Section 63G-6a-1705 (renumbered from Section 63G-6-809) in S.B.
8838 153 do not go into effect and Section 63G-6-809 in S.B. 114 remains repealed;

8839 (22) by renumbering and amending Section 63G-6-813 to Section 63G-6a-1705, to
8840 read:

8841 **"~~[63G-6-813.] 63G-6a-1705. Factual determination of procurement appeals panel~~**
8842 **~~final and conclusive.~~**

8843 ~~[(1) On any protest or appeal under Section 63G-6-810, the Procurement Appeals Board~~
8844 ~~shall promptly decide the contract controversy or whether the solicitation or award was in~~
8845 ~~accordance with this chapter. Any prior determinations by administrative officials regarding~~
8846 ~~protests of solicitations or awards, suspension or debarments, contract controversies, or breach~~

8847 of contract controversies shall not be final or conclusive.]

8848 ~~[(2)] A determination of an issue of fact by [the Procurement Appeals Board under~~
8849 ~~Subsection (1) shall be final and conclusive unless]~~ a procurement appeals panel may not be
8850 overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.

8851 ~~[No determination on an issue of law shall be final or conclusive.];~~

8852 (23) by repealing Section 63G-6-814.5;

8853 (24) the changes to Section 63G-6a-1706 (renumbered from Section 63G-6-811) in S.B.
8854 153 do not go into effect and Section 63G-6-811 in S.B. 114 remains repealed;

8855 (25) by enacting Section 63G-6a-1706 to read:

8856 **"63G-6a-1706. Dismissal of an appeal not filed in compliance with requirements.**

8857 A procurement appeals panel may dismiss an appeal that is assigned to the procurement
8858 appeals panel if the appeal is not filed in accordance with the requirements of this chapter.";

8859 (26) the changes to Section 63G-6a-1707 (renumbered from Section 63G-6-812) in S.B.
8860 153 do not go into effect;

8861 (27) the changes to Section 63G-6a-1708 (renumbered from Section 63G-6-813) in S.B.
8862 153 do not go into effect;

8863 (28) the changes to Section 63G-6a-1802 (renumbered from Section 63G-6-814) in S.B.
8864 153 do not go into effect and Section 63G-6-814 in S.B. 114 remains repealed;

8865 (29) by renumbering and amending Section 63G-6-815 to Section 63G-6a-1802, to
8866 read:

8867 **"[63G-6-815.] 63G-6a-1802. Appeal to Utah Court of Appeals -- Jurisdiction of**
8868 **district court.**

8869 (1) Subject to Subsection (2), a person who receives an adverse decision, or the state,
8870 may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within
8871 seven days after the day on which the decision is issued.

8872 (2) An agency in the state executive branch or a local public procurement unit may not
8873 appeal the decision of a procurement appeals panel, unless the appeal is:

8874 (a) recommended by the protest officer involved; and

8875 (b) except for a local public procurement unit that is not represented by the attorney
8876 general's office, approved by the attorney general.

8877 (3) The Utah Court of Appeals:

8878 (a) shall consider the appeal as an appellate court;

8879 (b) may not hear the matter as a trial de novo; and

8880 (c) may not overturn a finding or decision of the protest officer or a procurement
8881 appeals panel, unless the finding or decision is arbitrary and capricious or clearly erroneous.

8882 (4) The Utah Court of Appeals is encouraged to:

8883 (a) give an appeal made under Subsection (1) priority; and

8884 (b) consider the appeal and render a decision in an expeditious manner.

8885 (5) The district court shall have original jurisdiction in a cause of action between a
8886 contractor and the state for any cause of action that arises under, or in relation to, an existing
8887 contract between the contractor and the state.";

8888 (30) the changes to Section 63G-6a-1803 (renumbered from Section 63G-6-815) in S.B.
8889 153 do not go into effect;

8890 (31) by renumbering and amending Section 63G-6-817 to Section 63G-6a-1803, to
8891 read:

8892 **"[63G-6-817.] 63G-6a-1803. Statutes of limitations.**

8893 ~~[(1) Any action under Subsection 63G-6-815(1)(a) shall be initiated as follows:]~~

8894 ~~[(a) within 20 calendar days after the aggrieved person knows or should have known of~~
8895 ~~he facts giving rise to the action; provided, however, that an action with respect to an invitation~~
8896 ~~for bids or request for proposals shall be initiated prior to the opening of bids or the closing~~
8897 ~~date for proposals unless the aggrieved person did not know and should not have known of the~~
8898 ~~facts giving rise to the action prior to bid opening or the closing date for proposals; or]~~

8899 ~~[(b) within 14 calendar days after receipt of a final administrative decision pursuant to~~
8900 ~~either Section 63G-6-806 or Section 63G-6-813, whichever is applicable.]~~

8901 ~~[(2) Any]~~ (1) An action ~~[under]~~ described in Subsection ~~[63G-6-815(1)(b)]~~

8902 63G-6a-1802(5) shall be commenced within six months after ~~[receipt of a final administrative~~

decision pursuant to ~~Section 63G-6-806 or Section 63G-6-813, whichever is applicable~~] the person bringing the action knew or should have known of the circumstances upon which the action is based.

~~[(3)] (2)~~ The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Subsection

~~[63G-6-815(1)(c)(2), except notice of appeals from the Procurement Appeals Board pursuant to Section 63G-6-814 concerning actions on a contract or for breach of contract shall be filed within one year after the date of the Procurement Appeals Board decision]~~

~~63G-6a-1802(5).";~~

(32) the changes to Section 63G-6a-1804 (renumbered from Section 63G-6-817) in S.B. 153 do not go into effect;

(33) the changes to Section 63G-6a-1805 (renumbered from Section 63G-6-816) in S.B. 153 do not go into effect;

(34) by renumbering Section 63G-6a-1902 to Section 63G-6a-1911;

(35) by renumbering and amending Section 63G-6-801.5, that was enacted in S.B. 114, to Section 63G-6a-1902, to read:

"[63G-6-801.5.] 63G-6a-1902. Requirement to exhaust administrative remedies -- Protests and appeals.

(1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.

(2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter, by timely filing:

(a) a protest in accordance with Section 63G-6a-1602;

(b) any appeal of the protest decision in accordance with Section 63G-6a-1702; and

(c) any appeal from a procurement appeals panel in accordance with Section

8931 63G-6a-1802.

8932 (3) A person who files a protest or appeal under this chapter is limited to protesting or
8933 appealing on the grounds specified in the filing document described in Subsection
8934 63G-6a-1602.

8935 (4) In hearing a protest or an appeal under this chapter relating to an expenditure of
8936 federal assistance, federal contract funds, or a federal grant, the person who hears the appeal
8937 shall ensure compliance with federal law and regulations relating to the expenditure.";

8938 (36) by renumbering Section 63G-6a-1903 (renumbered from Section 63G-6-818) in
8939 S.B 153 to Section 63G-6a-1909;

8940 (37) the changes to Section 63G-6a-1606 (renumbered from Section 63G-6-802) in S.B.
8941 153 do not go into effect;

8942 (38) by renumbering and amending Section 63G-6-802 to Section 63G-6a-1903, to
8943 read:

8944 **"[63G-6-802.] 63G-6a-1903. Effect of timely protest or appeal.**

8945 In the event of a timely protest under [Subsection 63G-6-801(1), 63G-6-810(1), or
8946 63G-6-815(1), the state shall] Subsection 63G-6a-1602(1), or a timely appeal of the protest
8947 under Section 63G-6a-1702 or 63G-6a-1802, a state executive branch agency or a local public
8948 procurement unit may not proceed further with the solicitation or with the award of the contract
8949 until;

8950 (1) all administrative and judicial remedies [have been] are exhausted [or until];

8951 (2) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:

8952 (a) the chief procurement officer, after consultation with the attorney general's office
8953 and the head of the using agency [or the head of a purchasing agency], makes a written
8954 determination that [the] award of the contract without delay is necessary to protect substantial
8955 interests of the state[-];

8956 (b) the head of the purchasing agency, after consultation with the attorney general's
8957 office, makes a written determination that award of the contract without delay is necessary to
8958 protect substantial interests of the state; or

8959 (c) for a local public procurement unit that is not represented by the attorney general's
8960 office, the local public procurement unit, after consulting with the attorney for the local public
8961 procurement unit, makes a written determination that award of the contract without delay is
8962 necessary to protect substantial interests of the local public procurement unit; or

8963 (3) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district
8964 court;

8965 (a) the chief procurement officer, after consultation with the attorney general's office
8966 and the head of the using agency, makes a written determination that award of the contract
8967 without delay is in the best interest of the state;

8968 (b) the head of the purchasing agency, after consultation with the attorney general's
8969 office, makes a written determination that award of the contract without delay is in the best
8970 interest of the state; or

8971 (c) for a local public procurement unit that is not represented by the attorney general's
8972 office, the local public procurement unit, after consulting with the attorney for the local public
8973 procurement unit, makes a written determination that award of the contract without delay is
8974 necessary to protect the best interest of the local public procurement unit.";

8975 (39) the changes to Section 63G-6a-1904 (renumbered from Section 63G-6-819) in S.B.
8976 153 do not go into effect;

8977 (40) by renumbering and amending Section 63G-6-803 to Section 63G-6a-1904, to
8978 read:

8979 **"~~63G-6-803.~~ 63G-6a-1904. Costs to or against protestor.**

8980 (1) When a protest is sustained administratively or upon administrative or judicial
8981 review and the protesting bidder or offeror should have been awarded the contract under the
8982 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
8983 the state:

8984 (a) the reasonable costs incurred in connection with the solicitation, including bid
8985 preparation and appeal costs; and

8986 (b) any equitable relief determined to be appropriate by the reviewing administrative or

8987 judicial body.

8988 (2) When a protest is not sustained by ~~[the Procurement Appeals Board]~~ a procurement
8989 appeals panel, the protestor shall reimburse the ~~[Division of Purchasing and General Services]~~
8990 public procurement unit for the per diem and expenses paid by the ~~[division]~~ public
8991 procurement unit to witnesses or appeals ~~[board]~~ panel members and any additional expenses
8992 incurred by the ~~[state agency]~~ staff of the public procurement unit who have provided materials
8993 and administrative services to the ~~[board]~~ procurement appeals panel for that case.

8994 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a
8995 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to
8996 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
8997 incurred in preparing or appealing an unsuccessful bid or offer.”;

8998 (41) the changes to Section 63G-6a-1905 (renumbered from Section 63G-6-820) in S.B.
8999 153 do not go into effect;

9000 (42) by renumbering and amending Section 63G-6-805 to Section 63G-6a-1905, to
9001 read:

9002 **“~~[63G-6-805.] 63G-6a-1905. Authority to resolve controversy between state and~~**
9003 **~~contractor.~~**

9004 ~~[The chief procurement officer, the head of a purchasing agency, or a designee of either~~
9005 ~~officer]~~ A protest officer, or the protest officer's designee, is authorized, [prior to] before
9006 commencement of an action in court concerning [the controversy, to settle and resolve] a
9007 controversy [which] that arises between the state and a contractor [under or by virtue of a
9008 contract between them. This includes, without limitation,] in relation to an existing contract
9009 between the state and the contractor, including controversies based upon breach of contract,
9010 [mistakes] mistake, misrepresentation, or other cause for contract modification or rescission, to
9011 settle and resolve the controversy.”;

9012 (43) by renumbering and amending Section 63G-6-816 to Section 63G-6a-1906, to
9013 read:

9014 **“~~[63G-6-816.] 63G-6a-1906. Effect of prior determination by agents of state.~~**

9015 In any judicial action under Section ~~[63G-6-815]~~ 63G-6a-1802, determinations by
9016 employees, agents, or other persons appointed by the state shall be final and conclusive only as
9017 provided in Sections ~~[63G-6-419 and 63G-6-806, and Subsection 63G-6-813(2)]~~ 63G-6a-1911,
9018 63G-6a-1603, and 63G-6a-1705.";

9019 (44) by renumbering and amending Section 63G-6-819 to Section 63G-6a-1907, to
9020 read:

9021 **"~~[63G-6-819.]~~ 63G-6a-1907. Effect of violation after award of contract.**

9022 (1) If after ~~[an]~~ award of a contract it is determined administratively or upon
9023 administrative or judicial review that a ~~[solicitation]~~ procurement or award of a contract is in
9024 violation of law:

9025 ~~[(1) If]~~ (a) (i) if the person awarded the contract ~~[has not acted]~~ did not act fraudulently
9026 or in bad faith:

9027 ~~[(a) The]~~ (A) the contract may be ratified and affirmed if it ~~[is determined that doing so]~~
9028 is in the best interests of the state; or

9029 ~~[(b) The]~~ (B) the contract may be terminated; and

9030 (ii) the person awarded the contract shall be compensated for the actual expenses
9031 reasonably incurred under the contract ~~[prior to]~~ before the termination, plus a reasonable
9032 profit; or

9033 ~~[(2) If]~~ (b) if the person awarded the contract ~~[has]~~ acted fraudulently or in bad faith:

9034 ~~[(a) The]~~ (i) the contract may be declared null and void; or

9035 ~~[(b) The]~~ (ii) the contract may be ratified and affirmed if ~~[such action]~~ it is in the best
9036 interests of the state, without prejudice to the state's rights to any appropriate damages.

9037 (2) Under no circumstances is a person entitled to consequential damages in relation to
9038 a solicitation or award of a contract under this chapter, including consequential damages for
9039 lost profits, loss of business opportunities, or damage to reputation.";

9040 (45) by renumbering and amending Section 63G-6-820 to Section 63G-6a-1910, to
9041 read:

9042 **"~~[63G-6-820.]~~ 63G-6a-1910. Interest rate.**

(1) Except as provided in Subsection (2), in controversies between the state and contractors under this ~~[part,] chapter,~~ interest on amounts ultimately determined to be due to a contractor or ~~[to]~~ the state are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(2) This section does not apply to public assistance benefits programs.";

(46) the changes to Section 63G-6a-1605 (renumbered from Section 63G-6-907) in S.B. 153 do not go into effect;

(47) by renumbering and amending Section 63G-6-907 to Section 63G-6a-1908, to read:

"[63G-6-907.] 63G-6a-1908. Resolution of local public procurement controversies.

The provisions of this chapter relating to protests and appeals apply to a local public procurement unit.";

(48) by changing the references in Section 63G-10-403 from "Subsection 63G-6-801(9)" to "Subsection 63G-6a-1602(5)"; and

(49) by granting the Office of Legislative Research and General Counsel the authority to technically renumber sections for proper placement in the chapter and to technically renumber corresponding cross references."

Section 245. Coordinating S.B. 153 with S.B. 165 -- Substantive and technical amendments.

If this S.B. 153 and S.B. 165, Redevelopment Agency Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication on May 1, 2013, by amending Subsection 63G-6a-104(4) to read:

"(4) "Local public procurement unit" means:

(a) a local district, as defined in Section 17B-1-102;

(b) a special service district, as defined in Section 17D-1-102;

(c) a local building authority, as defined in Section 17D-2-102;

(d) a conservation district, as described in Title 17D, Chapter 3, Conservation District

9071 Act;

9072 (e) a public corporation, other than the Utah Housing Corporation;

9073 (f) a school district;

9074 (g) a public school, including a local school board or a charter school;

9075 (h) Utah Schools for the Deaf and Blind;

9076 (i) the Utah Education Network;

9077 (j) an institution of higher education of the state;

9078 (k) a county or municipality, and each office or agency of the county or municipality,

9079 unless the county or municipality adopts its own procurement code by ordinance;

9080 (l) a county or municipality, and each office or agency of the county or municipality,

9081 that has adopted this entire chapter by ordinance;

9082 (m) a county or municipality, and each office or agency of the county or municipality,

9083 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the

9084 adopted portion of this chapter; or

9085 (n) two or more of the entities described in this Subsection (4), acting under legislation

9086 that authorizes intergovernmental cooperation."